

**THE ENVIRONMENTAL MANAGEMENT OF
WHAINGAROA/RAGLAN HARBOUR
WITH A FOCUS ON THE PERIOD SINCE 1970**

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Case-study commissioned by the Waitangi Tribunal for the Wai 898 Te Rohe Potae Inquiry

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Explanatory Note

In March 2012 the Chief Historian's rapid appraisal of the research casebook for Te Rohe Potae district inquiry recommended that a district overview report on resource and environmental management be commissioned. It also suggested that targeted research was required on four environmental case-studies: Whaingaroa Harbour, the Mokau River mouth, the Waipa River, and Pirongia Forest Park. Three researchers were commissioned to undertake this project: David Alexander, Martin Fisher and Matthew Cunningham.

The environmental overview and the four case-studies were originally intended to form a single combined report. However, it became clear as the commission progressed that the subject material for the four case-studies was substantial enough to warrant being covered in separate documents. In addition, three specific topic-studies emerged from the overview project: the establishment of the Waikato Valley Authority, hydro-electric power generation in the Mokau catchment, and ironsand mining at Taharoa.

It was consequently decided to file the environmental overview and the four case-studies separately on the record of inquiry for Te Rohe Potae. As a result, this research commission is comprised of **five documents** instead of one: an environmental overview (together with the three topic-studies), and separate case studies on Whaingaroa Harbour, the Mokau River mouth, the Waipa River, and Pirongia Forest Park. Whilst each operates as a discrete, standalone report, some minor cross-referencing has been noted to avoid unnecessary overlaps, and the reports should still be read in the context of the original commission. The author of each report is noted in the prefaces: David Alexander for the environmental overview (and the three topic-studies), Martin Fisher for the Whaingaroa Harbour and Pirongia Forest Park case-studies, and Matthew Cunningham for the Mokau River mouth and Waipa River case-studies.

The reports are supported by **eight document banks**: the environmental overview, each of the three topic-studies, and the four case-studies. This has been done to allow for ease of use and distribution. The volume numbers for the document banks are as follows:

- Volume 1: Environmental overview
- Volume 2: Topic-study – Waikato Valley Authority
- Volume 3: Topic-study – hydro-electric power generation in the Mokau catchment
- Volume 4: Topic-study – ironsand mining at Taharoa
- Volume 5: Case-study – Whaingaroa Harbour
- Volume 6: Case-study – Mokau River mouth
- Volume 7: Case-study – Waipa River
- Volume 8: Case-study – Pirongia Forest Park



Figure 1: Satellite map of Whaingaroa Harbour

Introduction

Background

This case study on Whaingaroa (Raglan) Harbour arose from a gap in the research on environmental and resource management issues in the Waitangi Tribunal's Te Rohe Potae district inquiry. Initial research had been conducted by a team at Massey University led by Professor Michael Belgrave that produced both a scoping report and a main report. The scoping report provided some brief coverage of pollution and sedimentation issues in Whaingaroa Harbour, but these issues were not subsequently covered in the main report.¹ Belgrave and his team noted that it had not been possible within the time available to work with claimants from Whaingaroa to identify and complete case-studies. The main report notes that the 'Whaingaroa claimants would have had this research focus on water issues in Whaingaroa, particularly the impact of pollution on the harbour.'² Claimant counsel also noted research gaps regarding Whaingaroa Harbour in a number of different memoranda to

¹ Wai 898, #A64, pp 180-182

² Wai 898, #A76, p 12

the Presiding Officer.³ Claimant counsel stated that Whaingaroa claimants had identified a number of issues they sought to be addressed in the gap-filling research including ‘local government resource management, pest and noxious weed control, Harbour Boards and Management, the introduction of exotic flora and fauna, management of resource use and the impacts of intense settlement, protection of wahi tapu, water pollution, impacts on customary fisheries, undermining of kaitiakitanga, deforestation and the resulting sedimentation of the Harbour, ownership of the water and water extraction for farming and other purposes.’⁴ The Chief Historian’s rapid appraisal of the Rohe Potae research casebook, conducted in March 2012 to assess research adequacy and sufficiency for the Rohe Potae inquiry, endorsed the commissioning of research on many of the issues noted by claimant counsel. ‘A case study of Whaingaroa Harbour and [the] surrounding area, covering environmental management and impacts, water pollution, impacts on customary fishery resources and cultural heritage concerns [is needed].’⁵

Claims issues

There are four claims related to the management of Whaingaroa Harbour:

- WAI 125 was first submitted by Hami Whakataari Kereopa and Vivian Te Uranga Morell Kawharu in 1990 on behalf of Tainui o Tainui ki Whaingaroa or Tainui Awhiro.
- WAI 775 was first submitted by Edward Parahi Wilson in 1998 on behalf of Ngati Tamainupo.
- WAI 1327 was first submitted by Maude Mori Shaw, Ken Te Houpihake Rautangata, Tuahu Watene and Sunnah Thompson in 2005 on behalf of Ngati Mahanga.

³ Wai 898, #3.1.436, #3.1.451, #3.1.518

⁴ Wai 898, #3.1.518, p3

⁵ Wai 898, #6.2.43, p 32

- WAI 2345 was first submitted by Verna Tuteao in 2008 on behalf of the Tuteao whanau.

The claims issues of relevance to this study of Whaingaroa Harbour generally focus on the management, environmental degradation and alleged cultural desecration of the Harbour by the Crown and its delegated local authorities—the Raglan County Council (RCC), the Raglan Harbour Board, the Ministry of Works and Development, the Waikato Valley Authority (WVA), the Department of Health, and in the last two decades the Waikato District Council (WDC) and the Waikato Regional Council (WRC). The Tainui o Tainui ki Whaingaroa or Tainui Awhiro⁶ (WAI 125) statement of claim notes that the Crown has enacted a series of resource management regimes which failed to take into account Tainui mana and kaitiakitanga. Tainui notes that these regimes had less engagement with the Tainui community before 1960 but that the Town and Country Planning and the Resource Management Act (RMA) regimes have in many ways continued the old pattern of limited engagement. In terms of the environmental degradation of the harbour, Tainui claims that the Crown has removed the right of Tainui to manage the harbour and allowed the destruction of kai moana. In addition, they allege that the Crown has allowed the desecration of wahi tapu, urupa and pa sites by permitting the construction of wind farms, giving greater priority to mining interests than to tangata whenua and generally making it difficult for Tainui to live on their tupuna whenua.⁷ The Ngati Tamainupo (WAI 775) statement of claim notes that the Crown has failed to recognise the claimants' mana and ownership over Whaingaroa Harbour by delegating management of the harbour and its resources to local authorities. Ngati

⁶ Ngati Koata ki Whaingaroa, Ngati Kahu, Ngati Tahau, Ngati Te Kore, Ngati Pukoro, Ngati Te Ikaunahi, Ngati Tira, Ngati Heke, Ngati Rua Aruhe, Ngati Hounuku, Paetoka and Ngati Te Karu make up Tainui o Tainui ki Whaingaroa. In this case-study I will either refer to them as Tainui or Tainui Awhiro.

⁷ Wai 898, #1.1.6(b)

Tamainupo also claim that the Crown has failed to protect the claimants' interests in the resources contained within Whaingaroa Harbour.⁸

Ngati Mahanga's (WAI 1327) final statement of claim contains an extensive section on the environmental effects of the Crown's actions. Generally their statement of claim refers to the Crown's degradation of the coastal environment and depletion of customary resources such as fisheries, as well as the series of management regimes that have undermined Ngati Mahanga's ability to exercise kaitiakitanga around the harbour. Specifically, Ngati Mahanga's statement of claim notes the way in which the taniwha that inhabit Whaingaroa Harbour have been ignored and desecrated by successive local management regimes.⁹ Verna Tuteao and the descendants of Wetini Mahikai (WAI 2345) in their statement of claim allege that the Crown has allowed the environmental degradation within Whaingaroa and the wider traditional rohe of Wetini Mahikai and his descendants.¹⁰

Methodology

This case-study is divided into three parts: first, is a brief historical overview covering the background of the customary management and uses of Whaingaroa Harbour and the Crown's management of the harbour through the Raglan Harbour Board until the 1970s. Chapter 2 begins by focusing on the local government regimes under which Whaingaroa Harbour has been managed since the 1970s, local authority planning and the development of community management by the (mainly Pakeha) residents of Whaingaroa Harbour during the 1990s. Chapter 2 also investigates issues regarding changes in the physical environment such sedimentation and erosion, the effects of changes on water quality and estuary edge vegetation, and the state of customary fisheries and wahi tapu. This case-study concludes with an examination of sewerage system at Raglan from the mid-1970s through to the

⁸ Wai 898, #1.1.36

⁹ Wai 898, #1.2.25

¹⁰ Wai 898, #1.2.132

present. This development began under the auspices of the Raglan County Council with oversight by the Ministry of Works and Development, the Ministry of Transport, the Department of Health, the Waikato Valley Authority and the Raglan Harbour Board in the early 1970s and continued through the Waikato District Council and Waikato Regional Council from the 1990s to the present.

The historical overview section relies on a number of primary and secondary sources. Several oral and traditional history reports and statements of claim discuss the Maori management of the Harbour, the use of customary fisheries and other natural resources and the location of several wahi tapu around the Harbour. The oral and traditional history report for Ngati Tamainupo, Kotara and Te Huaki noted the alienation of land around the Waingaro River and Waingaro Landing. That report contains a number of interviews with kaumatua and kuia regarding the depletion and despoliation of customary fisheries such as conga eels, oysters and pupu. The sedimentation and pollution of Whaingaroa Harbour as well as the Waingaro Landing also figure prominently in the report.¹¹

The ‘Tainui Oral and Traditional History Report’ provides the most detailed discussion of environmental and resource management issues in the harbour and includes a number of case-studies. These case-studies cover the treatment and disposal of Raglan’s wastewater into Whaingaroa Moana from 1971-2004, the erection of a television transmitter at Raglan (1996-2010), the impact of the Paritata Marine Farm on customary fisheries and the establishment of the Contact Energy Wind Farm from 2000-2012. The oral and traditional history reports of Ngati Mahanga and Ngati Tahinga also note their connections to Whaingaroa Harbour. Ngati Mahanga mainly focus on the historical detail of their connection to the Harbour rather than on environmental or resource management issues. Ngati Tahinga’s

¹¹ Wai 898, #A109, p50-52, 59-81

oral and traditional history report notes their connection to the Te Akau block which borders the northern part of Whaingaroa Harbour.¹²

Several existing research reports cover issues that are relevant to the history of the Crown's management of Whaingaroa Harbour through its delegated local agencies as well as the related history of land alienation around Whaingaroa Harbour. While this is an environmental and resource management case-study, there was a strong correlation between the alienation of land and the loss of rights to manage the Harbour area situated around the land. Jane Luiten's "Local Government in Te Rohe Potae" analyses the effect of local government in the inquiry district but focuses on rating issues and not on the management of Whaingaroa Harbour.¹³ The history of land alienation around Whaingaroa Harbour has been addressed in a number of different research reports: the "Te Akau D Alienation History" by Craig Innes; Paula Berghan's "Block Narratives"; Leanne Boulton's "Hapu and Iwi land transactions with the Crown and Europeans in Te Rohe Potae inquiry district, c.1840-1865" and Kesaia Walker's "History of pre-1865 Crown Purchase Reserves in Te Rohe Potae."¹⁴ CW Vennell and Susan Williams' *Raglan County: Hills and Sea, A Centennial History 1876-1976* addresses the development of local government in Raglan County but there is little content on Maori participation in the management of the Harbour following the Land Wars of the 1860s.¹⁵ These secondary sources have been complemented by archival sources from the Marine Department and the Native Department.

Chapters 2 and 3 rely heavily on primary sources including archival material held by Archives New Zealand in Auckland and Wellington, Waikato District Council (at Raglan and Ngaruawahia) and the Waikato Regional Council (in Hamilton). All of the archives consulted were catalogued except for the Waikato District Council archives held at Raglan. The

¹² Wai 898, #A99, pp133-279; Wai 898, #A94; Wai 898, #A111

¹³ Wai 898, #A24

¹⁴ Wai 898, #A70; Wai 898, #A60; Wai 898, #A65; Kesaia Walker, #A142

¹⁵ CW Vennell and Susan Williams, *Raglan County: Hills and Sea, A Centennial History 1876-1976* (Auckland: Wilson & Horton Ltd, 1976)

archives held by Archives New Zealand contain files from the Department of Health, the Water Allocation Council, the Ministry of Works and Development and the Ministry of Transport. The Council archives hold files from the Raglan County Council and Raglan Harbour Board. The Raglan Harbour Board's minute books from 1970-1989 have been misplaced by the Waikato District Council and thus were not consulted for this case-study.¹⁶

The commission for this case-study directed the author to address a number of different issues:

- environmental management provisions and implementation
- Local authority powers and zoning
- Introduced and native species protection and control
- Management powers for water rights
- Powers for the protection of wahi tapu and cultural heritage items, and consideration of impacts of these in areas such as
- The continued exercise of kaitiakitanga
- Participation in environmental decision making
- Water pollution and loss of water quality
- Losses or reductions in customary fishery resources, and
- Loss or damage to wahi tapu and cultural heritage items.¹⁷

Not every aspect of the commission was addressed and some parts of the terms of reference were explored in greater detail than others. Due to a lack of sources, the management of introduced and native species in Whaingaroa Harbour, the management of the foreshore and seabed, and freshwater inflows were not examined. Local authority powers and zoning issues were not examined at length, but community management initiatives were investigated as an

¹⁶ Pers. Communication with Jan Lindsay, 22 February 2013.

¹⁷ Wai 898, #2.3.87

alternative to examining the use of formal powers. In Chapter 2 general environmental management provisions, the management of customary fishery resources and wahi tapu, and participation in environmental decision-making are explored in some detail. The final chapter which focuses on the management and effects of the Raglan Wastewater Treatment Plant addresses a number of the terms of reference: Maori participation in the management of Whaingaroa Harbour, the continued exercise of kaitiakitanga, protection of wahi tapu, losses or reductions in customary fishery resources, water pollution and loss of water quality, and management powers for water rights.

Chapter 1 – Historical Overview

The purpose of the historical overview and three small case-studies regarding the gradual establishment of Crown authority in Whaingaroa Harbour is to provide some context to the developments that took place from the 1970s onwards.

1.1 The Landscape of Whaingaroa Harbour

Whaingaroa Harbour at high tide covers 33 square kilometres, while the catchment draining into it has an area of 525 square kilometres¹⁸. Prior to the arrival of Maori the catchment would have been almost completely covered in a native forest cover, and prior to the arrival of Europeans it would have been only slightly less so. European settlers cleared much of the forest, especially on the flat and more gently sloping country, and developed grassland in its place, right up to the edge of the streams draining into the harbour. Most clearance for grassland had occurred by the 1920s, with a Geological Survey report in 1926 recording that indigenous forest stands were by then restricted to the steeplands¹⁹.

Whaingaroa Harbour is located 48 kilometres to the west of Hamilton and 149 kilometres south of Auckland. The Harbour is a drowned river valley that runs 12 kilometres inland from the entrance, for the most part is less than 2 kilometres wide. It has a number of rivers running into the harbour from the east including the Opoturu River, the Waingaro River, Tawatahi River and Waitetuna River as well as the Wainui Stream of which the source lies in Karioi Mountain. North of the harbour mouth there are extensive sand dunes that are rich in ironsand.²⁰ There are other sand dunes along the south side of the Harbour as well.²¹

¹⁸ A Swales et al, *Whaingaroa (Raglan) Harbour: sedimentation and the effects of historical catchment landcover changes*, 2005, Waikato Regional Council Technical Report 2005/36, pp 3 and 6.

¹⁹ J Henderson and LI Grange, *The geology of the Huntly-Kawhia subdivision, Pirongia and Hauraki divisions*, New Zealand Geological Survey Bulletin 28, 1926.

²⁰ The ironsands deposits at Raglan remained important to the mining industry well into the end of the 20th century. As a Review of Mineral Resources (1991) in the Waikato region pointed out, ‘the ironsands deposits of the west coast of the North Island are the largest metalliferous deposits in New Zealand.’ Peter Cochrane, ‘Mineral Resources of the Waikato Region: A Review,’ 1991/9, WRC Archives (supporting papers #1)

²¹ In the early 2000s the Waikato Regional Council published a guide on restoring sand dunes in the Waikato. It recognized the significant Maori settlement which had existed along the Waikato coast. ‘Urupa (Maori burial

On the south side of the Harbour limestone stacks, basalt rocks and pingao-covered black sand separates the mountains from the ocean.²² Whaingaroa Harbour contains a substantial estuary environment and is particularly susceptible to the waste that comes downstream from the rivers into the harbour—70 percent of its high tide surface is intertidal and 24 square kilometres are tidal estuarine flats.

To the north of the harbour is Te Akau and directly south is Raglan Town. South of the harbour mouth is Wainamu Beach, Ngarunui Beach and the popular surf breaks at Whale Bay and Manu Bay. The largest Maori-owned land blocks are located around Manu Bay and Whale Bay leading up to Karioi Mountain at Te Whaanga and Te Kopua. The Raglan bar, located at the harbour mouth, is constantly shifting. Whaingaroa Harbour is flanked by Karioi Mountain which sprawls across the skyline, dominating the rivers, lands and Harbour. The Harbour was once filled with a wide range of healthy kai moana—pipi, mussels, tio, titiko, kokota, tupa, patiki, kanae, tuna, mako, inanga, paua, kina, koura wheke and rimurimu. Many of the customary resources of āMaori groups have been polluted by agricultural runoff from the surrounding dairy farms as well as by the sewage system that emitted untreated sewage into the harbour mouth for decades.²³ The development of the sewage system by local and central government agencies forms the majority of this report.

grounds) and other waahi tapu (sacred) sites are also found in the dunes of the Waikato coast. These sites are of significant spiritual value to local Maori.’ In addition the guide also pointed to the ‘extensive midden deposits and artefact manufacturing areas with flakes of stone, worked shell and other debris.’ There was no discussion in the guide regarding what actions could be taken to conserve these important sites for Maori although the guide did at least note them. Waikato Regional Council, ‘Fragile: A Guide to Waikato Dunes.’ WDC Raglan Steve Soanes Archives, p 16 (supporting papers #2)

²² Wai 898, #A99, p 78

²³ Wai 898, #A99, p 133



Figure 2: Map of Karioi, beaches and bays in Whaingaroa

1.2 Maori and Whaingaroa Harbour to the 1870s

A number of Maori groups have occupied the lands around Whaingaroa Harbour for hundreds of years—Tainui o Tainui ki Whaingaroa, Ngati Tamainupo, Ngati Te Huaki, Ngati Kotara, Ngati Hourua and Ngati Mahanga. According to traditional accounts, Rakatāura, the tohunga aboard the Tainui waka, established a tuahupapa (sacred altar) atop Karioi when he first climbed the Mountain. He named the Mountain Karioi and later came back to live on it. A descendant of Rakatāura, Kākati, had his main kainga at Karioi. Many Tainui tupuna such as Kākati, Rakaupukupuku, Hounuku, Te Ikaunahi, Whareiaia and others lived on Karioi Mountain. Hounuku was a rangatira who was renowned for looking after others and his pa Iwitahi sits on the northeastern slopes of Karioi Mountain. The Tainui tupuna Tawhao lived at Te Whaanga near present-day Manu Bay and Whale Bay. The tupuna Punuiatekore and Marutehiakina lived at Horea on the northern side of Whaingaroa harbour. Uetapu, a mokopuna of Hoturua the navigator of the Tainui waka, was a tupuna of Te Atai o Rongo, who became the taniwha whose domain stretches from Te Tai Hauauru to Rangitoto ki te

Tonga in the Cook Strait. Te Atai o Rongo's lair is traditionally located at Te Kopua, an area where the Raglan County Council built oxidation ponds in the 1970s directly beside Poihakena Marae.²⁴

In addition to Iwitahi there are a number of other pa in the Whaingaroa region: Pikirangi, Kirikiripū, Te Paraiti, Te Pae Akaroa, Rangipū, Horongārara, Otakahi and Tarapātiki. Several kainga also existed before the confiscation of land on the northern side of Whaingaroa Harbour: Huriwaka, Te Papa Te Aute, Uruika, Kumukumu (Te Kaha) , Te Kawe, Te Tiki, Puketūtū, Waikere, Tokihonihoni, Te Maro o te Ata, Te Koutu, Marotaka, Pungataka, Te Pīpipi, Te Karaka, Pātikirau, Hōrea, Waipara, Rarauhi, Waiwhara, Puketoa, Mokoroa, Paihere and Tauterei. Te Whaanga, Tauranga, Tuhikaramea, Waikeri (Manu Bay), Iwitahi (which was both a pa and kainga), Te Pae Akaroa, Te Ūpoko, Rākaunui and Te Kōpua were kainga on the southern side of Whaingaroa Harbour. Wahi tapu are located all around the harbour but they are especially numerous at Horea on the northern side of the harbour. According to the Tainui oral and traditional history report the remains of Tainui tupuna have been repeatedly desecrated and ransacked by trainee archaeologists, farmers and others and as a result Tainui urupa are not identified in maps in the "Tainui Oral and Traditional History Report".²⁵

Prior to the arrival of Europeans, Whaingaroa Harbour was solely under the guardianship of local Maori groups. As the "Tainui Oral and Traditional History Report" notes, 'in order to survive within their environment, whanau and hapu established practices based on tikanga, to maintain resources both tangible and intangible.' 'Those practices, manaakitanga and kaitiakitanga, conserved taonga and ensured a balance was maintained between humans and others who shared the environment.' Maori viewed the world and the

²⁴ Wai 898, #A99, p 50; Wai 898, #M31(a), p 7

²⁵ Wai 898, #A99, pp 72-74

universe as an interconnected whole. This viewpoint was also shared by Ngati Mahanga in their oral and traditional history report.²⁶

The demographics of the Whaingaroa region were generally static prior to the arrival of Europeans although whanau and hapu disagreements could cause skirmishes and occasional casualties. Before Te Rauparaha left Kawhia due to his disagreements with other groups in the Waikato, he attacked Ngati Mahanga at Whaingaroa near Te Akau and defeated them although he did not remain in the area. Some of Ngati Koata fled south with Te Rauparaha and Ngati Toa but many also remained. Europeans did not migrate to the Whaingaroa area until 1835. Some rangatira did go to the battle of Matakītaki in 1822 to assist relatives, but the musket wars did not stretch to Whaingaroa.²⁷

The Reverend James Wallis had established a mission station at Whaingaroa in 1835 and made a pre-Treaty land purchase in 1839.²⁸ Further purchase attempts by missionaries in 1836 and 1850 were unsuccessful as those without rights to the area such as Te Wherowhero attempted to sell Tainui and Ngati Mahanga lands. The first attempts by the Crown to engage in the Whaingaroa area occurred in the 1850s when land purchasing officers began purchasing blocks of land. In 1851 representatives of Ngati Mahanga and Ngati Hourua led by Te Awaitaia (Wiremu Nera) sold approximately 8,000 acres around the present-day site of Raglan to the Crown for £400, which became known as the Whaingaroa purchase. Four areas were reserved for Maori: Te Mata, Takapaunui, Ohiapopoko and Te Uku.²⁹ In 1855, representatives of Tainui led by Kereopa and Wetini Mahikai sold what was believed to be 12,000 acres at Karioi for £575. Initially payment of £50 each had been made to Kereopa and Wetini respectively but only for what Tainui believe to be Te Hutewai (a stream located on

²⁶ Wai 898, #A99, pp 68-69; Wai 898, #A94, pp 322-345

²⁷ Wai 898, #A99, pp 63-67

²⁸ Wai 898, #A94, pp 238-240; Wai 898, #A99, pp 87-88

²⁹ Wai 898, #A70, pp 223-245; Wai 898, #A94, pp 243-248

Karioi) and not Karioi itself. At the Nga Korero Tuku Iho hui held at Raglan in April 2010 Heather Thompson and Angeline Ngahina Greensill both claimed that many of those who had signed the Karioi deed were children, and that three of the signatories were captives from Taranaki. This raises a question as to how carefully Crown officials inquired into the ownership of the land around Karioi.³⁰ An area believed to be 600 acres (that would later turn out to be 1,413 acres) was reserved for Maori groups: Te Whaanga, Te Kopua, Papahua and Rakaunui. Te Whaanga was known for many years as the Karioi Native Reserve and through it Tainui would maintain a strong direct whenua-based connection with Karioi Mountain.³¹

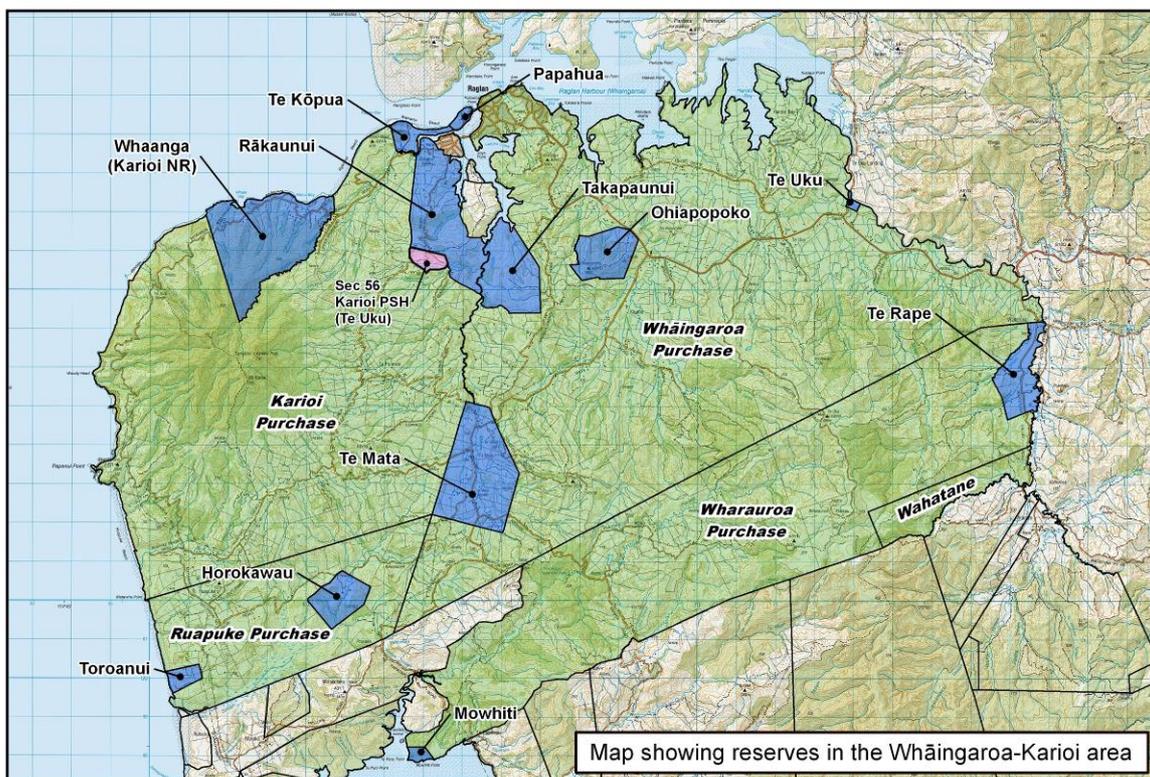


Figure 3: Map of Whāingaroa and Karioi purchases and Maori reserves

While some settlers began to live around Whāingaroa harbour the pattern of Maori occupation and use of the resources contained within the harbour continued relatively unchanged throughout the 1850s. Change began to take hold with the outbreak of war in the

³⁰ Wai 898, #A70, pp 348-354; Wai 898, #4.1.3, pp 110, 229

³¹ Wai 898, #A60, pp 47-49; Wai 898, #A99, pp 104-108; Wai 898, #A165

Waikato in 1863. British war-ships began anchoring at Whaingaroa harbour and while Te Awaitaia and Ngati Mahanga were seen as friendly towards the British, they strongly opposed the use of Whaingaroa harbour as a military staging point. Te Awaitaia wrote letters to Governor Grey challenging the presence of war-ships in the harbour. He is alleged to have said that no war party, either British or other Maori, should enter his territory unless it was over his 'dead body'. These events gave rise to the traditional korero that exists among Ngati Mahanga about Te Awaitaia paddling his waka out alone to challenge the government's war-ships. Eventually the war-ship *Eclipse* was allowed to anchor in front of Captain JC Johnstone's property near the Waitetuna Heads but not in the more central areas around Putoetoe. Te Awaitaia did not have the firepower or soldiers to compete with the British so this may have been one of the dominant reasons for allowing the *Eclipse* to anchor anywhere in the harbour. He did manage to assist in preserving the peace in the area as no shot was ever fired anywhere around Whaingaroa harbour during the war.³²

While Te Awaitaia was unable to prevent the *Eclipse* from entering Whaingaroa Harbour, his moderating influence on British naval deployment and his protection of Maori and non-Maori alike during the war showed that the management of the Harbour was still in the hands of local Maori. After he died in 1866 the management of the Harbour began to be progressively taken over by Europeans living in Raglan. Despite Ngati Mahanga's neutrality during the war, their lands were confiscated along with all other Maori land in the confiscation area in the eastern parts of Whaingaroa harbour. As the land was alienated through sales and confiscation, so the Maori authority to manage the harbour was also lost.

³² Wai 898, #A94, pp 221-225

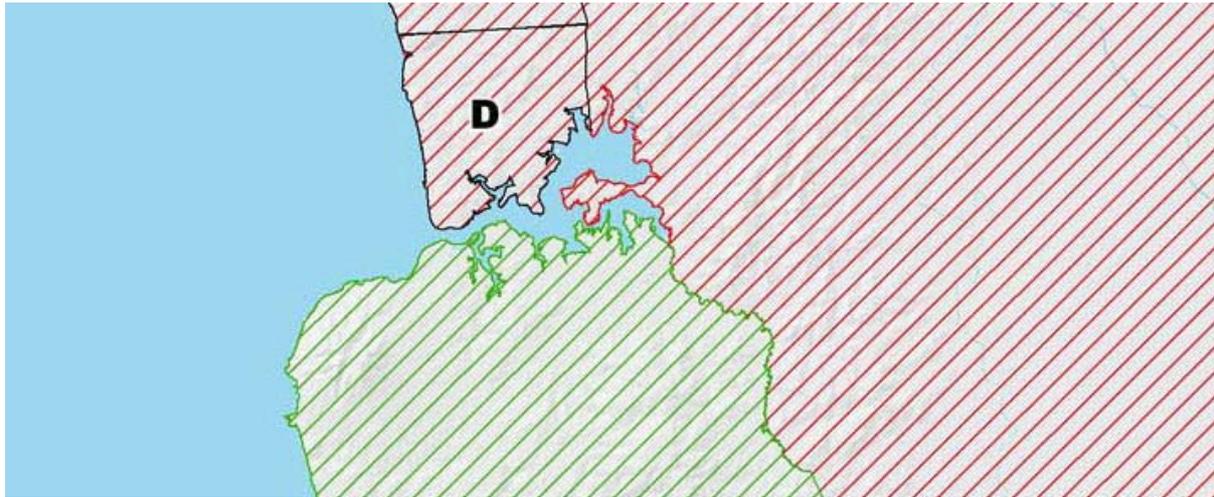


Figure 4: Map of confiscation boundary (red) in Whaingaroa Harbour

While settler self-government was established in Auckland in 1852, local government did not reach the Whaingaroa region until after the conclusion of the Waikato War. In 1866 the Whaingaroa Highway District was formed and it would soon thereafter become known as the Raglan Highway Board. The gradual take-over of the management of Whaingaroa Harbour by the Crown was apparent in one of the only primary sources found by the author related to Maori and Whaingaroa Harbour. In 1874 Mita Karaka Ngatipare, the agent for the Raglan and Waikato Native Company, requested permission from the Superintendent in Auckland to erect a store at the newly built Raglan wharf. Ngatipare had the support of individuals, both Maori and European, from Raglan as well as from the Chairman of the Raglan Highway Board. His request was approved.³³ After the abolition of the provinces in 1876 the Counties Act established the Raglan County Council.³⁴

1.3 The Crown slowly establishes some authority

One of the first organs of the New Zealand state to affect the region was the Marine Board which was formed in 1862. The Marine Board came under the control of the Customs Department until 1877 when it became the Marine Department. The Raglan County Council

³³ Mita Karaka Ngatipare to Auckland Superintendent, 29 June 1874; Chairman of Raglan District Board to Auckland Superintendent, 6 August 1874: C 95 489 AP2 20 2711/74, Archives NZ Auckland (supporting papers #3)

³⁴ *Counties Act 1876*; *New Zealand Gazette* 1976/933; Vennell and Williams, pp 109-114

was constituted as a Harbour Board originally under the Harbours Act 1883, Section 12, in 1894.³⁵ The Raglan Harbour Board mainly concerned itself with the construction of jetties, wharves and bridges around Whaingaroa Harbour. A number of jetties and wharves were built between the 1870s and the early 1910s at Raglan Town, Te Akau on the northern side of the Harbour and at Ruakiwi with financial help from central government.³⁶ In the mid 1920s

Figure 5: Map of historical and current wharves, landings and jetties in Whaingaroa Harbour and location of three case-studies



³⁵ *New Zealand Gazette* 1894/157; *AJHR* 1894 H-18, p 3

³⁶ C 95 490 AP2 21 3182/74; C 65 179 BBAD 1054 Box 2290 g 12/94; Archives NZ Auckland. M1 593 4/2138; M1 501 4/202; M1 593 4/2143: Archives NZ Wellington (supporting papers #4)

the Raglan Town Board erected a foot-bridge across the Opoturu inlet to Te Kopua.³⁷ None of the evidence consulted for this report shows consultation with Maori regarding the establishment of the Raglan Harbour Board or the construction of any wharves or bridges. Only the central Jetty at Raglan, the Raglan Wharf, Horongarara jetty and the Gillett jetty are still operational.

1.3.1 Three small case-studies on the Crown's gradual acquisition of authority

The Crown slowly established its authority at Whaingaroa Harbour in the late nineteenth century and early twentieth century. In the early 1910s and early 1930s some issues affecting Maori around Whaingaroa Harbour appear in the primary sources that were consulted—namely a proposed accommodation paddock on the Te Akau wharf, the Raglan County Council's attempt to purchase a recreation reserve near Te Kopua beach, and removal of sand from Maori land at Te Akau. These small case-studies are illustrative of the Crown's very slowly increasing control and influence in the area in the late 1800s and early 1900s.

1.3.1.1 An accommodation paddock (1)

In 1910 Hami Kereopa of Raglan wrote to the Native Minister requesting that an accommodation paddock be built on the Te Akau side of Raglan Harbour. According to Kereopa, when the New Zealand Settlers Association held the lease they had set a paddock aside for travellers' horses free of charge. The new lessee, John Darrows, refused to paddock horses on his land—not even if he was paid. He was reported at times to even drive the horses back home if they were left on his property. Kereopa requested that the Crown acquire some land abutting the jetty for a paddock. The Under-Secretary for Native Affairs asked one of his officials to write to Kereopa informing him that as the land was not under the control of

³⁷ C 65 179 BBAD 1054 Box 2290 g 12/94, Archives NZ Auckland (supporting papers #5)

the Department nothing could be done. He felt that it was ‘a question with which the Native owners or lessee should deal. The Department cannot take any action in the way suggested.’³⁸

1.3.1.2 A recreation reserve at Te Kopua Beach (2)

In June 1914 at a meeting of the Raglan District Chamber of Commerce participants resolved that they would ask their local MP, RJ Bollard, to look into the possible purchase of land at Te Kopua Beach. The Secretary of the Chamber of Commerce felt that the Maori owners were not utilising the land as productively as the population of Raglan could. ‘I understand this sandy stretch is owned by a few natives, but is quite useless to them in its present condition and [is] likely to remain so, whereas it is felt in Raglan that if it was acquired as a Recreation Reserve some use would be made of it by the residents and improvements would be effected.’³⁹ The Secretary told the Under-Secretary of Native Affairs that sand had encroached on the land and rendered ‘the area practically useless for all purposes except recreation.’⁴⁰ After enquiries that were sent from the Native Affairs Department to the Marine Department and then to the Department of Lands and Survey it was revealed that several applications for investigation of title had been dismissed at various times by the Native Land Court due to a lack of interest from Maori.⁴¹ The Under-Secretary of Native Affairs wrote to MP RJ Bollard informing him that as the land was not Crown land it would not be available for a recreation ground.⁴²

1.3.1.3 The removal of sand from Maori land at Te Akau (3)

The removal of sand and shingle was a contentious issue between Maori landowners who lived near the foreshore and private Pakeha residents as well as members of the Raglan

³⁸ Hami Kereopa to the Native Minister, 8 August 1911; Thomas W. Fisher to Grace, 1 September 1911: MA1 1056, 1911/457, Archives NZ Wellington (supporting papers #6)

³⁹ Secretary of the Chamber of Commerce to RJ Bollard, 20 June 1914, M1 5 4/252, Archives NZ Wellington (supporting papers #7)

⁴⁰ Fisher to the Secretary of Marine, 26 June 1914, M1 5 4/252, Archives NZ Wellington (supporting papers #8)

⁴¹ Assistant Under-Secretary of Lands & Survey to George Allport, 20 July 1914, M1 5 4/252, Archives NZ Wellington (supporting papers #9)

⁴² Fisher to Bollard, 29 July 1914, M1 5 4/252, Archives NZ Wellington (supporting papers #10)

Town Board. In February 1931 the Chairman of the Raglan Town Board wrote to the Marine Department enquiring about the Raglan Town Board's rights to sand and shingle on the foreshore. The Chairman sought permission from the Department to remove sand and shingle from the Raglan foreshore free of any payment and to allow the Town Board the right to charge for and issue permits to private individuals to remove sand and shingle. On both accounts the Chairman's requests were rejected by the Secretary of Marine. The Chairman also enquired about the right of private individuals to charge royalties for the use of sand and shingle from their own lands which abutted the foreshore, and specifically whether Maori landowners could charge royalties as well. The Secretary of Marine wrote to the Chairman that private individuals, whether Pakeha or Maori, could charge royalties for any sand or shingle taken from above the high-water mark. The Secretary indicated to the Chairman that the 'foreshore' was defined by the Harbours Act 1923 as the 'bed, shore or banks of tidal water as are covered and uncovered by the flow and ebb of the tide at ordinary Spring tides.' (original underlining) This correspondence between the Raglan Town Board and the Marine Department took place because the Chairman had erroneously believed that Maori and Pakeha landowners did not have to be paid for sand and shingle taken from their properties. This practice of non-payment would continue despite the Marine Department's instructions to the Chairman.⁴³

An example of this practice continuing in August 1931 had one of the Maori landowners from Te Akau D17C, Keiha Newton, writing to the Marine Department complaining about the removal of sand that had been sanctioned by the Raglan Town Board.

I am one of the owners of Te Akau D17C a block of Native Land situated at the Raglan Heads and contain[ing] drifting sand. The Europeans here defy us and help themselves to barge loads at a time for commercial purposes. I have at different times notified the local and Hamilton Police that the Europeans

⁴³ JM Thompson to Superintendent, Mercantile Marine, 8 January 1931; GC Godfrey to Thompson, 9 February 1931: M1 603, 4/2525, Archives NZ Wellington (supporting papers #11)

who are defying us will get their heads knocked off if they continue taking the sand from our foreshore. That stopped for some twelve months but I now find that they are still taking the sand and say it belongs to the Marine Department. They can have the sand at 3s. a yard Royalty but they would sooner defy us. Awaiting to hear from you.⁴⁴

Newton was informed by the Secretary of Marine that the foreshore ('the area between the high and low-water mark of ordinary spring tides') was the property of the Crown but that the area above the high-water mark belonged to the property owner. The Secretary asked that Newton provide the names of those who had been removing sand from his property.⁴⁵

Newton provided three names: Thomas Parker of the Raglan Town Board, a Mr Tomlinson of the Frankton Sash & Door Factory and GS Galvan who owned the boat which took the sand from Te Akau to the other side of the Harbour near Raglan Township. Newton wrote:

The Raglan Hall was built by Mr Tomlinson...the sand was supplied by GS Galvan, the only person on the Raglan Harbour with a punt. When negotiations were mentioned by Mr Tomlinson for supplying sand he approved me and agreed to pay us on a Royalty basis. Then when the work had been in progress for a time Mr [Thomas] Parker, Chairman of the Town Board, told Mr Tomlinson not to pay for the sand as it belonged to the Marine Department. The sand or most of it came from our land which is situated on both sides of the Raglan Harbour. I saw the police both in Raglan and Hamilton and told them that I would take the law into my own hands if these people mentioned above refused or rather took no notice of my ordering them off the place. They then took a few punt loads from the Marine Department's ground as they said being that portion below high water mark or rather the mean or average high water mark....There must have been ten punt loads of sand come off our property or as they maintained the Marine Department's property. However this one thing is certain we received no royalty and they did not get our permission to remove sand. Hope this is sufficient data for you to work upon.⁴⁶

⁴⁴ Keiha Newton to Minister of Marine, 12 August 1931, M1 603, 4/2525, Archives NZ Wellington (supporting papers #12)

⁴⁵ Godfrey to Newton, 25 August 1931, M1 603, 4/2525, Archives NZ Wellington (supporting papers #13)

⁴⁶ Keiha Newton to Godfrey, 12 November 1931, M1 603, 4/2525, Archives NZ Wellington (supporting papers #14)

It is unclear from the papers that have survived what action, if any, was taken or whether others continued to remove sand from Newton's property. It is also unclear exactly how much sand the Marine Department allowed for removal.

In a 1944 letter to the Secretary of Marine the Raglan County Council (RCC) made enquiries about the Raglan Harbour Board's jurisdiction. The County clerk noted that the Harbour Board received 'numerous applications to remove shell, sand and limestone from various portions of the Harbour foreshore.' The Marine Department informed the RCC that since the foreshore was not vested in the Board that it had no power to grant permission to anyone to remove shells, sand or limestone from the foreshore without the permission of the Marine Department.⁴⁷ These three small case-studies show how the Crown was slowly beginning to influence the management of Whaingaroa harbour in the first half of the twentieth century.

1.4 Conclusion

When the Harbours Act 1883 was repealed in 1923 the Raglan County Council was re-constituted as the Raglan Harbour Board under Section 11 of the Harbours Act 1923. The Orders in Council for vesting the management of the wharves in the RCC was necessary because of the government financial assistance provided for the building of wharves around Whaingaroa. In 1941 the Clerk of the RCC wrote to the Marine Department enquiring whether the Ruakiwi and Te Akau wharves could be vested absolutely in the Harbour Board but his request was denied.⁴⁸ Correspondence between the Raglan Harbour Board and the Marine Department throughout the twentieth century was centred on the Harbour Board attempting to garner loans for the building of wharves, taking ownership of wharves such as

⁴⁷ Secretary of Marine to RCC, 3 October 1945, M1 593 4/2138, Archives NZ Wellington (supporting papers #15)

⁴⁸ G Brownlee-Smith to the Marine Department, 2 December 1941, M1 593 4/2143, Archives NZ Wellington (supporting papers #16)

noted above and in the 1950s and 1960s expanding the territory over which the Harbour Board had jurisdiction down the southern coast to Manu Bay and Whale Bay.⁴⁹

Maori groups living around Whaingaroa Harbour had managed the Harbour for hundreds of years prior to the arrival of Europeans. With the arrival of missionaries and settlers and eventually the military during the Waikato war in the 1860s the influence of Europeans over the Harbour began to increase. When the Raglan Harbour Board was originally established in 1894 European management of the Harbour became formally entrenched by statute, but Maori in the region continued to exercise their own forms of kaitiakitanga. The Raglan Harbour Board's files and minute books from 1894 to 1970 held by the Waikato District Council were not extensively consulted due to time constraints and the fact that this case-study focuses on the era from 1970 onwards. However some files and minute books were analyzed and there was no evidence of Maori participation or consultation regarding the management of the harbour or the resources the harbour contains other than the three small cases noted above, which came from files held by Archives New Zealand and not the Waikato District Council. These small cases were the only evidence of Maori participation found in the archives that were consulted. The impacts of the implementation of these management regimes prior to 1970 did not appear from the sources consulted to have caused significant concerns for Maori living around Whaingaroa Harbour. According to some claimants, from 1970 the impacts seemed to increase greatly.⁵⁰

For the nineteenth century period the harbour was the main highway and the main means of communication. Wharves and jetties were centres of local community life, with the roading pattern radiating out from the landing places. This was the context for the early

⁴⁹ 'Raglan Harbour Board – Foreshore Control,' RCC 34/177. WDC Ngaruawahia Archives (supporting papers #17)

⁵⁰ Workshop at the Gillett papakainga, Raglan with the Gillets, Tainui Awhiro, Ngati Mahanga, Ngati Hikairo and others , 17 March 2013

European (and Crown) interest in the harbour. It was the context for as long as launch transport remained important. When road transport developed, European interest in the harbour declined. Europeans turned their back on the harbour. European interest only revived as people gained more leisure time, and interest in matters such as water quality developed.

Chapter 2 - The modern history of the management of Whaingaroa Harbour

This chapter addresses the local government regimes that have been in place since the 1970s as well as the Resource Management Act regime. This examination will include a short analysis of the scheme plans, regional plans and district plans that have been implemented in and around Whaingaroa Harbour. It will then briefly examine the development of community-driven organisations that have become involved in the management of Whaingaroa Harbour and the ways in which they have attempted to include tangata whenua in those organisations. It then investigates some of the changes to the physical environmental that have occurred in Whaingaroa Harbour such as sedimentation and the subsequent effects on water quality and estuary edge vegetation. A discussion of management regimes for customary fisheries and wahi tapu follows. This chapter concludes with a case-study on how local government and Tainui tried to address the erosion of Maori land at Te Kopua. As will be shown below, this chapter demonstrates the continued frustration of Maori groups and the Raglan community in general with local government regimes for Whangaroa Harbour.

2.1 Local government since the 1970s

The Raglan Harbour Board continued to manage the harbour throughout the 1970s and 1980s until the local government reforms of the late 1980s established the Waikato District and Waikato Regional Councils in 1990. The Marine Division of the Ministry of Transport was established in 1972 to take over the harbour functions of the Marine Department and correspondence between the Raglan Harbour Board and the Marine Division continued much as it had previously. The Ministry of Transport was involved in the sewage scheme in terms of the installation of outfall pipe on Crown tidal land. Other government bodies were established during the mid-twentieth century that had an effect on the management of the Harbour—such as the Waikato Valley Authority that was established in

1956 and especially the Water Allocation Council. The Water and Soil Conservation Act 1967 vested in the Crown the right to control and regulate the use of all natural waters in the Crown and established the National Water and Soil Conservation Authority and the Water Allocation Council. This Council was the government body that granted the Raglan County Council the right to discharge sewage into Whaingaroa Harbour.⁵¹ The Water Allocation Council consisted of eleven members appointed by the Governor-General on the advice of the Minister of Works. The Chairman of the Council was not allowed to be ‘an officer or employee in the Government service.’ Five members were to be appointed from government Departments and Ministries, one member each from the Department of Agriculture, the Department of Internal Affairs, the New Zealand Electricity Department, the Ministry of Works and the Department of Health. Three members were appointed to represent local authorities, one member each from the Municipal Association of New Zealand, the New Zealand Counties Association and the New Zealand Catchment Authorities Association. The final two members were appointed to represent the interests of primary industry and manufacturing in natural water, respectively, from Federated Farmers and the New Zealand Manufacturers’ Federation.⁵²

The Raglan Harbour Board had managed Whaingaroa Harbour for nearly a hundred years when its authority over the Harbour ended in 1989. On 31 October 1989 the Raglan Harbour Board ceased to exist and the WDC took over the functions, duties and powers of the Raglan Harbour Board.⁵³ The RCC had also ceased to exist in 1989 and its functions, duties and powers were also taken over by the WDC. The WDC initially wanted to develop a

⁵¹ *Water and Soil Conservation Act 1967*: ‘An Act to promote a national policy in respect of natural water, and to make better provision for the conservation, allocation, use and quality of natural water, and for promoting soil conservation and preventing damage by flood and erosion, and for promoting and controlling multiple uses of natural water and the drainage of land, and for ensuring that adequate account is taken of the needs of primary and secondary industry, water supplies of local authorities, fisheries, wildlife habitats, and all recreational uses of water.’

⁵² *Water and Soil Conservation Act 1967*, No. 135, pp 1022-1023

⁵³ *New Zealand Gazette*, 13 June 1989, p 2470

Joint Harbour Management Approach in which Kawhia, Aotea and Whaingaroa Harbours were all managed together.⁵⁴ The WDC's management of the Harbour was short-lived however, and the Resource Management Act 1991 vested the management of New Zealand's waterways in eleven regional councils. For Whaingaroa Harbour the new regional authority was the Waikato Regional Council (WRC). The WRC's management of Whaingaroa Harbour was affected by two subsequent Acts which redistributed some of its powers. The Maritime Transport Act 1994 contained provisions regarding local boating and navigation safety. The more influential piece of legislation was the Local Government Amendment Act 1999 which divided the responsibilities for harbour control between regional and district councils. Regional councils were to be responsible for erecting and maintaining navigation aids and removing obstructions and impediments to navigation, while district councils retained the power to erect and maintain wharves, quays and other works. In the case of the erosion-prone Whaingaroa Harbour, the District Council retained responsibility for erecting and maintaining protective works designed to prevent the encroachment of water through erosion or flooding. The District Council also remained responsible for the sewage system.

Many of the local councils' environmental responsibilities were set out in the Resource Management Act (RMA) 1991. The RMA recognises elements of the Maori world view. Section 6 lists 'the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga' and 'the protection of protected customary rights' as two of its 'matters of national importance'. Section 7 is supposed to give 'particular regard' to the duties of 'kaitiakitanga'. Kaitiakitanga is defined in the Act as 'the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Maori in relation to natural and physical resources; and includes the ethic of stewardship.'⁵⁵ The

⁵⁴ F Illingsworth to S Colson, 21 October 1992. Raglan Harbour – General Vol 1 1989-1995, WDC Ngaruawahia Archives (supporting papers #18)

⁵⁵ *Resource Management Act 1991*, Sections 6 and 7

Town and Country Planning Act 1977 had a similar provision—section 3(1)(g) which declared that ‘the relationship of the Maori people and their culture and traditions with their ancestral land’ was a matter of national importance to be ‘recognised and provided for.’⁵⁶ In addition to Sections 6 and 7, Section 8 of the RMA states that ‘in achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).’ Under Section 33 of the RMA a local authority is able to ‘transfer any 1 or more of its functions, powers, or duties under this Act, except this power of transfer, to another public authority’ which may include an iwi authority.⁵⁷ Tainui would like to see authority for Whaingaroa Harbour delegated to local Maori groups such as itself under Section 33 of the RMA.⁵⁸

2.1.1 Scheme Plans, District Plans and Regional Plans

2.1.1.1 Raglan County Council district scheme planning

The area of Raglan County extended to mean high water mark. The County Council’s jurisdiction therefore excluded Whaingaroa Harbour, although in its separate capacity as Raglan Harbour Board, the County Council was responsible for boating navigation and for harbour use facilities such as wharves and landings. With the existence of the Harbour Board, the Crown had to a large extent delegated authority for the waters and foreshore of Whaingaroa.

The County Council produced operative district planning schemes in July 1974 and November 1983. The issue is whether these schemes acknowledged the connections between the surrounding catchment and the harbour. The 1974 scheme was prepared under the Town and Country Planning Act 1953. Although it can be described as basic in its approach, it was

⁵⁶ Wai 262, Vol 1, p 249

⁵⁷ *Resource Management Act 1991*, Sections 8 and 33

⁵⁸ Wai 898, #M31(a), p 87

typical of its time. It adopted a development rather than an environmental protection focus. Thus the only direct reference to Whaingaroa Harbour was to describe it as “typical of bar harbours on the West Coast”, and comment that it “will be important in the transportation of bulk cargoes”⁵⁹, this perhaps being a reflection of the wishful thinking of the Council as Harbour Board. The county was zoned in order to provide for the needs of the district without land uses becoming spread indiscriminately or harming amenity or the production of food from high-value soils. “Farming of any kind” and forestry were predominant (i.e. permitted as of right) uses, which generally meant those activities were not fettered by the scheme.

The 1983 district scheme was prepared under the Town and Country Planning Act 1977. As preparation for the scheme, the planning consultants to the County Council had produced a “discussion of issues” document in 1980⁶⁰. Arising out of the identified issues, the Council’s thinking in preparing its district scheme was based on a concern that rural depopulation was making the provision of community services more expensive. The Council’s response was to seek to broaden and diversify the county’s economic base. The planning scheme was therefore openly pro-development in its approach, not placing impediments in the way of allowing agriculture in particular to flourish. All types of farming and forestry continued to be predominant uses. This was apparent in the scheme’s coverage of water and soil conservation, which was referred to as a Waikato Valley Authority responsibility, with the County Council able to influence matters only when a land use change was proposed:

⁵⁹ Raglan County Council, *Raglan County scheme statement, code of ordinances and district planning maps (approved)*, April 1974, scheme statement p 5

⁶⁰ Raglan County Council, *Raglan County plan: discussion of issues*, prepared by Murray-North Partners Limited, Hamilton, March 1980

At that point Raglan County Council has a responsibility to ensure that land uses are considered in a manner which protects the land from erosion and has regard to the quality of the nearby water.⁶¹

The district scheme considered Whaingaroa Harbour primarily in the context of its scenery and landscape. In the only specific reference in the scheme, it was stated:

Although physical access to many parts of Raglan Harbour is difficult or not possible, the Harbour is still sensitive to development because much of it is visible from State Highway 23 and Raglan township. For example, land on a cliff face adjacent to Motukokako Scenic reserve lies directly northeast across the Harbour from Raglan township and is an important part of the scenic attraction. The Paritutu Peninsula is a very obvious feature within the Harbour. Should any development be proposed within these areas, Council would wish that:

- a. areas of indigenous bush were retained, and
- b. development was carried out in a manner which did not conflict with the landscape values of the Harbour....⁶²

[The] three major estuarine habitats are the tidal reaches of Waikato River, Raglan and Aotea Harbours. These areas provide a habitat for a wide diversity of water dependent wildlife which includes a number of resident, internal NZ migrant and trans-equatorial migrant birds. Species in these categories include godwits, dotterels, gulls, terns, shags, waterfowl, herons and other wading birds.⁶³

More generally, it stated:

Council's objectives for Coastal Areas and Harbours are to promote public awareness of their values and range of uses, and to provide appropriate protection where it is able.

Policies are:

1. To limit development to forms which are appropriate, and which do not detract from the physical and/or cultural values of any particular area.
2. To require in these areas that the design and external appearance of new buildings do not detract from these areas, and to require landscaping where necessary.
3. To provide for appropriate uses of recreation reserves and other land over which Council has direct responsibility.
4. To encourage landowners to pursue conservation or open space covenants on land within these areas, and to actively assist in providing such protection.⁶⁴

⁶¹ Raglan County Council, *District scheme review (operative)*, November 1983, p 110

⁶² Raglan County Council, *District scheme review (operative)*, November 1983, pp 101-102

⁶³ Raglan County Council, *District scheme review (operative)*, November 1983, p 108

⁶⁴ Raglan County Council, *District scheme review (operative)*, November 1983, p 112

The 1983 district scheme was still in force in the early 1990s, as a transitional district plan, when the upsurge in forestry planting in the Whaingaroa catchment caused an increase in sediment runoff into the harbour.

2.1.1.2 Waikato Valley Authority management

Responsibility for the waters of Whaingaroa Harbour rested with Crown agencies up until 1973. It was the Water Allocation Council, serviced by the Ministry of Works in Wellington, that issued the first water right for the discharge of treated sewage into the harbour in 1971. In 1973 the boundaries of the Waikato Valley Authority district were extended to include Whaingaroa Harbour and its catchment (along with the catchments of other Waikato west coast rivers and harbours). From this date Waikato Valley Authority administered the water right for the treated sewage discharge, and any other water takes and discharges in Whaingaroa Harbour. It was also responsible for administering central government subsidies for any soil conservation and catchment control schemes, although implementing any physical works was a Raglan County Council responsibility.

The Authority produced two technical documents specifically about the Raglan district, and introduced one bylaw that affected land use in the Waikato region. Both documents were produced in 1979. The first was a Raglan County resources study, which was prepared to assist the County Council in the preparation of its district scheme review⁶⁵; it was the primary source of information relied on by the County Council during the production of its own “statement of issues” document in 1980. The key feature of this survey was its use of the new Land Use Capability Inventory worksheets being produced by the National Water and Soil Conservation Organisation of Ministry of Works and Development. The Inventory identified limitations to land use due to erosion susceptibility or soil quality. As discussed

⁶⁵ Waikato Valley Authority, *Raglan County resources survey*, Waikato Valley Authority Technical Publication No. 1, March 1979

earlier in this report, Raglan County Council chose not to make use of this information in its 1983 district scheme, as the threat of rural depopulation overrode concerns about soil erosion. The Council argued that erosion control was a Waikato Valley Authority responsibility, and it could only act in a supporting role. Of the resources survey, the district scheme stated:

The Waikato Valley Authority has identified a number of areas in the County where there are high soil erosion risks. These generally comprise the steeper hill country and scarplands where soil slip and sheet erosion are the most common.... Streambank erosion in narrow valleys within the hill country may also be severe.⁶⁶

The Waikato Valley Authority was as aware, if not more aware, as Raglan County Council about the risks of erosion and sediment flow downstream in the rivers flowing into Whaingaroa Harbour, when there was an upsurge in forestry planting in the 1990s.

The Authority exercised its management of the erosion risk by passing a Conservation of Ground Cover Bylaw in 1977. The statutory authority for the bylaw was Sections 149 and 150 Soil Conservation and Rivers Control Act 1941. It required the obtaining of a permit from the Authority before vegetation was cleared or tracks constructed on a large scale (where an area of more than 1 hectare was involved). Conditions could then be attached to the permit to direct how the clearance or track construction was carried out.

The second technical document produced by Waikato Valley Authority was a survey of Whaingaroa Harbour water quality⁶⁷. This survey was undertaken as a direct result of the discharge of Raglan's treated sewage into the harbour, which had commenced in 1977.

In response to public concern that this discharge could alter water quality and possibly lead to shellfish contamination, sampling began in late 1976 and ended in early 1979.⁶⁸

⁶⁶ Raglan County Council, *District scheme review (operative)*, November 1983, p 111

All but the last sentence in this quote had been included earlier in the "discussion of issues" document. Raglan County Council, *Raglan County plan: discussion of issues*, prepared by Murray-North Partners Limited, Hamilton, March 1980, p 15

⁶⁷ Waikato Valley Authority, *Raglan Harbour water quality*, Waikato Valley Authority Technical Publication No. 6, June 1979

⁶⁸ Waikato Valley Authority, *Raglan Harbour water quality*, Waikato Valley Authority Technical Publication No. 6, June 1979, p 2

Four sites between the discharge site off the end of Ocean Beach Road and Raglan main wharf were sampled for coliform bacteria (as an indicator of human effluent):

The data obtained have indicated that the water quality of Raglan Harbour is not a cause of concern from a bacteriological and health risk standpoint. Further to this, the bacteriological standard for Classes SA and SB waters are probably readily met, and shellfish can be safely taken from these waters.

There is no evidence of a change in water quality, from a bacteriological standpoint, from before to after the commissioning and operation of the sewerage system. Concern that the discharge of effluent would contaminate shellfish in the harbour is not supported by this study.

There have occasionally been higher coliform concentrations in samples taken at the Wharf site, in the inner harbour, than at other sites. These higher values are possibly due to land runoff, septic tank seepage, or boat discharges.⁶⁹

2.1.1.3 Waikato District Council District Plan

Under the Resource Management Act 1991, the responsibility of Waikato District Council for land planning extends only to mean high water mark at spring tides⁷⁰. However, there is a provision in the RMA that obligates resource management agencies to consider what are termed “cross boundary” matters in their planning. The impact of land management decisions on Whaingaroa Harbour, and liaison between Waikato District Council, Waikato Regional Council, and other agencies with responsibilities affecting Whaingaroa Harbour, would be “cross-boundary” matters.

In a State of the Environment report in 2000⁷¹, Waikato District Council makes no reference to the quality of the water environment of Whaingaroa Harbour, thereby failing to consider Whaingaroa Harbour in “cross-boundary” terms. A second state of the environment

⁶⁹ Waikato Valley Authority, *Raglan Harbour water quality*, Waikato Valley Authority Technical Publication No. 6, June 1979, p 4

⁷⁰ There is a fine point of distinction involved here – because the Raglan County district scheme covered land down to mean high water mark, there was a narrow strip between the line of mean high water mark and the line of mean high water mark at spring tides where the Raglan County district scheme was not superseded by the Waikato District Plan with the passing of RMA, and instead it became part of the coastal marine area subject to Waikato Regional Council’s Regional Coastal Plan. Such a fine point can be significant with, for example, the construction of a seawall.

⁷¹ Waikato District Council, *Our place – a profile; Waikato District state of the environment report 2000*, 2000

report was produced by the District Council in 2006⁷². It acknowledged that Whaingaroa Harbour is an important nursery for fish, a habitat for wading birds, and contains important geological features. The report noted that the number of community groups in the Waikato District area engaged in ecological restoration work had grown considerably over the period since the previous report in 2000, which indicated a growing interest in the general community to improve biodiversity. However, between 1994 and 2004 the Waikato District had lost some 2700 hectares of indigenous forest and scrub due to land clearance (while gaining some 500 hectares of scrub elsewhere due to retirement from grazing)⁷³. With respect to the Raglan wastewater treatment discharge, the report remarked:

The Raglan wastewater facility is currently being upgraded, which will result in the quality of effluent discharged to the Raglan Harbour meeting shellfish quality standards. The current wastewater treatment system is insufficient to meet the needs of the Raglan community, particularly in summer when the population soars to approximately 16,600 people.⁷⁴

A third State of the Environment report was produced in 2009⁷⁵. It largely repeated the 2006 report with respect to the matters referred to above about Whaingaroa Harbour. With respect to sewage treatment at Raglan it recorded a very high community dissatisfaction rate (39% dissatisfied or very dissatisfied) in an annual survey of community attitudes about the provision of District Council services⁷⁶.

Waikato District Council's first district plan became operative in December 1997. Because of time constraints it has not been examined for this report. District plans are supposed to be reviewed every ten years. The review district plan (i.e. the second edition of the district plan) was published for public comment and submission in September 2004, and

⁷² Waikato District Council, *State of the environment report 2006*, 2006

⁷³ Waikato District Council, *State of the environment report 2006*, 2006, pp 64-65

⁷⁴ Waikato District Council, *State of the environment report 2006*, 2006, p 82

⁷⁵ Waikato District Council, *State of the environment report 2009*, 2009

⁷⁶ Waikato District Council, *State of the environment report 2009*, 2009, p 103

became operative in its entirety in April 2013⁷⁷. It recognises the role that the land surrounding the harbour has on the harbour's character and amenity. However, this is expressed in the plan primarily in visual terms, being related to the coastal environment protection matters of national importance in the Resource Management Act, rather than in terms of the inter-connections between land use and sediment transport into the harbour. It is concerned with retaining indigenous vegetation and habitats of indigenous fauna for their amenity, biodiversity and intrinsic values, rather than for the contribution they can make to reducing soil erosion. There is one reference to Whaingaroa Harbour:

Coastal Land

Development will be managed to protect landscape and ecological values throughout the coastal environment.

The west coast is a wild and scenic coastline, and limited road access has restricted development in the past. However, increasing demand for development is expected. Raglan Harbour (Whaingaroa) and Aotea Harbour are more sheltered and are ecologically and culturally important.⁷⁸

It talks in general terms only of avoiding, remedying or mitigating “adverse effects on biodiversity”, which include “in-stream values, riparian margins and gullies”.

Land use intensification can affect in-stream values through changing runoff characteristics and vegetation disturbance. Subdivision and development should take account of in-stream values and protect these values as much as possible.⁷⁹

The Council claims to be unable to regulate against threats to indigenous vegetation caused by grazing⁸⁰, presumably because of the longstanding view of the territorial local authority that this should be considered a Regional Council responsibility.

The Waikato District Plan also discusses land disturbance near water, which can degrade water quality and ecosystems, and includes policy statements aimed at protection against disturbance:

⁷⁷ Waikato District Council, *Waikato district plan*, operative April 2013

⁷⁸ Waikato District Council, *Waikato district plan*, operative April 2013, p 1.4

⁷⁹ Waikato District Council, *Waikato district plan*, operative April 2013, pp 2.2-2.3

⁸⁰ Waikato District Council, *Waikato district plan*, operative April 2013, p 2.5

Policy 4.6.2

Margins of water bodies (including river banks) and the coast, significant indigenous vegetation and habitats, and other sensitive areas should be protected from the adverse effects of soil removal and disturbance, earthworks, vegetation clearance, and disposal of waste to land, or if disturbed, reinstated to an equivalent or better condition than prior to disturbance.

Policy 4.6.2A

Subdivision and land disturbance along the margins of water bodies and the coast should be managed to avoid, remedy or mitigate adverse effects, including sediment and nutrient runoff and the removal of soil.

Policy 4.6.2B

The coastal environment should be protected from the effects of activities distant from the coast, including soil disturbance, earthworks, vegetation removal and waste disposal to land.

Reasons and Explanation

The Waikato Regional Council has primary responsibility for managing water quality. The district plan has a role in managing land uses that can indirectly affect water quality. Activities such as soil disturbance, sediment and nutrient runoff, cultivation, vegetation clearance or discharge of contaminants around wetlands, lakes, rivers and coastal margins can adversely affect water quality, increase sediment generation, and cause river bank instability. Subdivision, use or development near the margins of water bodies or the coast is likely to involve such activities. Where the effects on the margins of water bodies cannot be avoided, mitigation and remediation shall be implemented to minimise the actual and potential effects of the activity.⁸¹

While Waikato District Council is supportive of protections on land that reduce sedimentation, bank erosion, and nutrient enrichment and contamination of water flowing into Whaingaroa Harbour, it seems to consider that it should follow the lead of Waikato Regional Council on these matters.

2.1.1.4 Waikato Regional Council regional planning

Under the Resource Management Act 1991, Waikato Regional Council is responsible for producing a suite of statutory planning documents. These are:

- Regional Policy Statement
- Regional Plan
- Regional Coastal Plan

⁸¹ Waikato District Council, *Waikato district plan*, operative April 2013, p 4.6

It is these documents that process the scientific data and the information on environmental quality and trends described earlier in this report. They then identify management measures that can avoid, remedy or mitigate harmful environmental effects. Management measures can be concerned with advocacy, providing incentives, and setting rules. Within the planning documents, Whaingaroa Harbour assumes a reasonably high profile.

Prior to the Regional Plan and the Regional Coastal Plan being produced and becoming operative, any rules and bylaws introduced before the passing of the 1991 Act were carried over and continued in force (by virtue of inclusion in a Transitional Regional Plan and a Transitional Regional Coastal Plan). Under the transitional provisions the Clearance of Ground Cover Bylaw 1977 continued to have effect. It was in place during the increase in forestry planting in the 1990s. However, as much of the planting was carried out on lands that had already been cleared of forest, the need for permits under the bylaw may have been avoided. If so, there would have been few controls in place to regulate the management of riparian lands and steep lands in the Whaingaroa Harbour catchment.

The Waikato Regional Policy Statement became operative in 2000. Of the West Coast harbours, it was stated:

Three extensive harbours (Kawhia, Aotea and Raglan – also known as Whaingaroa) are located along the coast. Tidal flats provide feeding, breeding and roosting sites for a large number of bird species, as well as nurseries for fish and shellfish. While they support large tracts of natural vegetation, the harbour margins are under threat from cattle grazing, reclamation and development. This encroachment into the harbour buffer zone has resulted in coastal erosion, the loss of amenity and landscape values, and the loss of habitat.⁸²

The Statement established objectives and policies for coastal management, including Whaingaroa Harbour. The quotation below is formatted differently to the text of the Regional Policy Statement, in order to identify objectives and policies only, while excluding

⁸² Waikato Regional Council, *Waikato Regional Policy Statement*, operative 2000, p 77

references to implementation methods, explanation and principal reasons for adopting, and environmental results anticipated:

Natural Character and Coastal Processes – preservation of the natural character of the coastal environment, including the physical and ecological processes which ensure its dynamic stability.

- Through a consultative process, identify and protect significant areas, features, processes, and the range and diversity of species and their habitats in the coastal environment, including (a) natural character of the coastal environment, (b) outstanding landforms and landscapes, (c) significant indigenous vegetation and significant habitats of indigenous fauna, (d) areas of importance to tangata whenua.
- Ensure that the subdivision, use and/or development of the coastal environment are undertaken in a way or at a rate which recognises and provides for the unique processes operating in this environment.
- Adopt a precautionary approach when managing the coastal environment which recognises the likely occurrence of events in the coastal environment of high potential impact and low probability.
- Promote the use of ‘soft-engineering’ or non-engineering solutions to avoid or mitigate the adverse effects of natural hazards in the coastal environment.

Coastal Water Quality – the quality of coastal water in the Waikato Region maintained or enhanced.

- Determine the characteristics for which coastal waters are valued, and manage those waters to ensure that those characteristics are maintained by avoiding, remedying and mitigating adverse effects on water quality.
- Integrated Management – integrated management achieved and unforeseen adverse events avoided.
- Seek consistent management of coastal resources by organisations with different functions in the coastal environment.
- Recognise the particular relationship tangata whenua have with the coastal environment, and ensure those relationships are taken into account when decisions relating to the use, development and protection of the coastal environment are made.
- Public Access – public access to and along the coastal marine area, and to public coastal lands, maintained or enhanced except in defined circumstances.
- Public access to and along the coastal marine area will be maintained or enhanced except where safety, defence or security purposes require limits on public access, sensitive areas require protection, or the integrity of sites important to tangata whenua must be maintained.
- Noise Emissions – adverse effects on amenity and conservation values resulting from excessive noise emissions in the coastal environment minimised.

- The significant adverse effects of noise emissions on conservation or amenity values will be avoided or mitigated.⁸³

Given the inter-connections identified by the scientific studies between catchment land management and the quality of the water environment in Whaingaroa Harbour, the emphasis on integrated management is appropriate. Recognition of the importance of coastal environments to tangata whenua, and their kaitiakitanga responsibilities, highlights the benefits of cooperative endeavours between Maori and local authorities. The regional plan and the regional coastal plan are lower-tier planning documents by which the Regional Policy Statement's objectives and policies can be implemented. Each plan can establish rules that all land and water users are required to follow, though the necessity for rules, rather than less prescriptive means of implementation, has to be justified.

The Waikato Regional Coastal Plan (apart from sections on marine farming, marinas and moorings) was approved in 2004⁸⁴. There seems to have been a conscious decision to avoid any reference to any particular part of the coastal marine area in the region, such as Whaingaroa Harbour, so that objectives, policies, rules and other methods of implementation could be applicable to all of the coastal marine area. This is despite the Resource Management Act calling on regional councils to protect outstanding natural features and landscapes, and to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna. Recognition for particular parts of the coastal marine area is relegated to Appendix IV of the Plan. This identifies Areas of Significant Conservation Value, terminology adopted from the New Zealand Coastal Policy Statement. The whole of Whaingaroa Harbour is one of those Areas, the reasons for this being, according to the Appendix:

- Site of cultural significance to Tainui

⁸³ Waikato Regional Council, *Waikato Regional Policy Statement*, operative 2000, pp 79-87

⁸⁴ Waikato Regional Council, *Waikato Regional Coastal Plan*, operative 2004

- Resident and frequenting rare and threatened wading and coastal bird fauna
- Hector's [nowadays known as Maui's] dolphin area
- Recognised southern limit of mangroves⁸⁵

However, there is no follow-through in terms of management provisions specifically for Whaingaroa Harbour in recognition of its identified status.

The apparent intention when the Regional Coastal Plan was being prepared was that regional policy for the coastal marine area would be developed in a two-stage approach. The Regional Coastal Plan would be the first stage, and the production of individual harbour plans would occur as a second stage. The Regional Coastal Plan states:

Environment Waikato will prepare Harbour Plans, in conjunction with tangata whenua, key stakeholders and community members, which identify appropriate use, development and protection of harbours and estuaries, taking into account, for example, the following:

- Compatibility and conflicts between users of the CMA
- Linkages with land based facilities and development
- The relationship tangata whenua as Kaitiaki have with their identified ancestral taonga such as water, waahi tapu and kaimoana
- The maintenance and enhancement where practicable of natural character, amenity, ecological values and public access
- The need to minimise impacts on coastal processes
- Social, economic, cultural and recreational aspirations of the local and regional community
- The cumulative effects of use and development on estuaries and harbours from a strategic region wide perspective
- Safeguarding the life supporting capacity of ecosystems
- Availability of information and the need to make information-based decisions regarding ecological and coastal processes

Such harbour plans would allow holistic and integrated planning that crossed the mean high water mark dividing line, and that met tangata whenua and local community needs. As they were produced they could be added to the Regional Coastal Plan by means of the variation process⁸⁶.

⁸⁵ Waikato Regional Council, *Waikato Regional Coastal Plan*, operative 2004, Appendix 4-2

⁸⁶ Waikato Regional Council, *Waikato Regional Coastal Plan*, operative 2004, pp 17-25 to 17-26

However, no harbour plans have been prepared. Because of the length of time that it took to hear and make decisions on appeals to the Regional Coastal Plan⁸⁷, any momentum was lost, and coastal planning within the Regional Council became starved of resources. The intended foundation provided by the Regional Coastal Plan has not been built upon.

The Waikato Regional Plan, covering all of the Waikato Region except for the coastal marine area, became operative in September 2007⁸⁸. As such, it does not cover Whaingaroa Harbour directly, though decisions made under it can have a downstream impact on the harbour. Matters addressed in the Plan include:

- Non-point source discharges into waterways, such as general runoff of sediment, nutrients and bacterial contaminants will be tackled through a combination of education and encouragement, and conditions on permitted activities, to gradually change identified inappropriate farming practice. However, more stringent conditions and standards may be used in regulatory methods in the future if no improvement in water quality is detected⁸⁹
- It is acknowledged that “it is important to manage the freshwater resources of the Region so that they do not adversely impact” on the coastal marine area⁹⁰
- It is considered important that “the management of water resources in the Waikato Region should reflect the values and aspirations of both Maori and non-Maori”⁹¹
- Steep hill country and areas adjacent to estuaries are regarded as high risk erosion areas where accelerated erosion as a result of human activity needs to be reduced⁹²

Rules and other methods of implementation are then identified in the Regional Plan to bring about the environmentally sustainable changes that are considered necessary.

Because the planning documents have to be reviewed every ten years, Waikato Regional Council has commenced the process of producing second editions of its plans. Central government has already completed its review of the New Zealand Coastal Policy

⁸⁷ The Regional Coastal Plan was publicly notified in 1994, and decisions on all public submissions had been made by 1997. Rather than proceed with the hearing of appeals at the time, efforts were instead put into the preparation and public notification of variations on marine farming, marinas and moorings. It was not until 2005 that appeals on the 1997 decisions version of the Plan were completed, and not until 2007 that appeals on the three variation topics were completed.

⁸⁸ Waikato Regional Council, *Waikato Regional Plan*, operative September 2007

⁸⁹ Waikato Regional Council, *Waikato Regional Plan*, operative September 2007, p 3-6

⁹⁰ Waikato Regional Council, *Waikato Regional Plan*, operative September 2007, p 3-7

⁹¹ Waikato Regional Council, *Waikato Regional Plan*, operative September 2007, p 5-7

⁹² Waikato Regional Council, *Waikato Regional Plan*, operative September 2007, p 3-7

Statement, which was approved in 2010. The Regional Council has completed its public consultation on a reviewed Regional Policy Statement, and has amended its draft Policy Statement in light of submissions received. The review process has reached the stage where appeals have been lodged to those decisions, but not yet heard. The next stage, once the Regional Policy Statement provides a firm foundation, is to commence work on reviewing the second-tier plans, the Regional Coastal Plan and the Regional Plan. These may be reviewed together and produced together as a single document (referred to as the one-plan process). This would have the advantage of reducing (although not eliminating entirely) the impact of mean high water mark as a dividing line between different management regimes and different modes of thinking.

Sitting at a lower tier below the statutory planning documents are a series of strategy documents. One is the Regional Pest Management Strategy⁹³. This acknowledges that saltwater paspalum is a pest in estuarine environments. However, the regional strategy is to confine eradication measures for this species to Aotea and Kawhia Harbours⁹⁴. The strategy does not respond to the pleas of the scientist who surveyed estuarine vegetation in Whaingaroa Harbour that saltwater paspalum incursions into valued indigenous vegetation habitats in Whaingaroa Harbour should be controlled before they got further out of hand.

2.2 Community management of Whaingaroa Harbour

Although the WRC became the local government body responsible for Whaingaroa Harbour in 1989, the perceived previous mismanagement of the Harbour by the Raglan Harbour Board and the Waikato Valley Authority led to the development of community management groups in the mid-1990s. The idea for community-based planning was

⁹³ Waikato Regional Council, *Waikato regional pest management strategy 2008-2013*, operative December 2008

⁹⁴ Waikato Regional Council, *Waikato regional pest management strategy 2008-2013*, operative December 2008, p 90

developed by both local stakeholders as well as different areas of local government.⁹⁵ The community planning project was developed on principles around ecosystem initiatives derived from Environment Canada.⁹⁶ Local resident Fred Lichtwark had contacted the MP for Raglan, Simon Upton, to discuss the poor environmental state of Raglan Harbour in 1994. In later years Upton would use the local volunteer efforts of those at Raglan to promote the potential for devolved management at Whaingaroa.⁹⁷ Subsequently meetings were arranged with Upton, local residents and community groups and representatives from the WDC and WRC to discuss pollution and harbour management issues, to recognise the roles of different agencies involved and to explore options for resolving the environmental problems. A first meeting was held on 24 March 1995 and it involved many stakeholder groups but, other than Mana Forbes of Ngati Hikairo, no tangata whenua were present despite Maori having been active as a community on the issue of sewage discharges and levels of treatment prior to the mid-1990s.⁹⁸ Some Pakeha residents were also active on sewage discharge issues in the 1970s and 1980s but not to the extent that they would be in the 1990s and 2000s when they joined in many cases with Maori residents who were trying to implement a sewage system with land-based disposal. This is discussed in further detail in the sewage case-study.

At the end of July 1995 members of the Raglan community met to gain support for the formation of the Whaingaroa Harbour Care Society Incorporated. In addition to various members of the community, WDC and WRC, James ‘Tex’ Rickard and Angeline Greensill, members of Tainui Awhiro, also attended. Fred Lichtwark led the meeting and proposed establishing a plant nursery at Wainui Reserve by supplying plants free of charge to plant

⁹⁵ Nicola Legat, ‘Shore thing: Coast Guardings,’ *North and South*, 1998. Waikato Regional Council File 22 03 35 Vol 8 (supporting papers #19)

⁹⁶ Guy M Robinson, ‘Community-Based Planning: Canada’s Atlantic Coastal Action Program (ACAP),’ *The Geographical Journal*, Vol. 163, No. 1, March 1997, p 25-37

⁹⁷ Simon Upton, ‘Address to the ACOPS/UNEP/South African government Conference,’ 3 December 1998; Philip English, ‘Clean-up of Raglan Harbour praised,’ *New Zealand Herald*, 4 December 1998: Waikato Regional Council File 22 03 35 Vol 9

⁹⁸ ‘Notes of Meeting on Raglan Harbour, 24 March 1995,’ 2 May 1995. Raglan Harbour – General Vol 1 1989-1995, WDC Ngaruawahia Archives (supporting papers #20)

next to waterways to create a buffer zone around the coastal edge and streams in the Raglan catchment areas. Either Greensill or Rickard raised concerns about the Society's 'name, lack of consultation about the draft proposal and planting trees on some areas of the harbour edge.' There was general agreement that if a society was formed that the members should meet with tangata whenua to discuss their concerns.⁹⁹

While Whaingaroa Harbour Care would become a successful project spearheaded by Fred Lichtwark that revitalized the environmental state of the Harbour, various members of the community also began to work with the WRC to develop the Whaingaroa Harbour Project or Whaingaroa Environment Group as it would later become known. In 1995 the Waikato Regional Council applied to the Ministry for the Environment for a grant from the Sustainable Management Fund regarding Whaingaroa Harbour.¹⁰⁰ The proposed study was to be entitled 'A Multistakeholder Approach to Sustainable Catchment Management: Whaingaroa (Raglan) Harbour case study.' An employee at the Waikato Regional Council had some interesting comments on the involvement of iwi in the study. 'The design of the project certainly has to include the iwi element, but it's a matter of the timing and nature of contact. I think we should work through the Waikato District Council on the matter. Unfortunately the area comprises one of the more 'difficult' elements of iwi which might mean that whatever is done will be wrong to everyone!'¹⁰¹ Manaaki Whenua (Landcare Research) also commented on the process of tangata whenua involvement in the application to the Ministry for the Environment. Manaaki Whenua representatives were set to meet with

⁹⁹ 'Whaingaroa – Raglan Harbour Care, Minutes of meeting held on 27 July 1995.' Waikato Regional Council File 22 03 35 Vol 2 (supporting papers #21). Angeline Ngahina Greensill is the daughter of Tuaiwa Eva Rickard and Tex Rickard. From this point onwards I will refer to James only as Tex. As Tex points out in his brief of evidence: 'My name is James Edwin Lancelot Rickard. I have never been called James in my life, everyone calls me Tex.' Wai 898, #M28

¹⁰⁰ WRC, 'Project aims at community management for Raglan Harbour,' 14 July 1995; Ministry for the Environment to WRC, Manaaki Whenua & NIWA, 12 July 1995. Waikato Regional Council File 22 03 35 Vol 2 (supporting papers #22)

¹⁰¹ Unknown author comments, 15 June 1995. Waikato Regional Council File 22 03 35 Vol 2 (supporting papers #23)

the WRC regarding the application and he wanted to include the Treaty Issues Manager at WDC at the meeting. Manaaki Whenua believed that if the WRC's Iwi Liaison Officer was also able to attend they could 'make progress in developing a strategy to handle some of the political sensitivities.'¹⁰² Concerns about the deadline for the application and the lack of consultation with local Maori groups were raised in a mid-June 1995 meeting between the WRC and the National Institute of Water and Atmospheric Research (NIWA):

[G]iven the strong local interests of Tangata Whenua (Eva Rickard) there is a significant risk that the deadlines of the proposal do not allow for sufficient/appropriate consultation. It could be seen therefore as something imposed by the Pakeha authorities pursued for their own benefit, and there is a risk that as a result the project may not be supported by Tangata Whenua!!¹⁰³

Later in June 1995 a WRC official met with Bill Tukuri, Eva Rickard, Mana Forbes, Rosetta Forbes and Angeline Greensill to discuss the proposal. Tukuri and Rickard were also affiliated with Tainui Awhiro. The WRC official's memorandum regarding the meeting did not reveal much about how these representatives reacted to the proposal other than that they expressed support for it.¹⁰⁴ Greensill and others' reservations with the project were more apparent in their letter of support:

I write to confirm the support given by members of Whaingaroa Ki te Whenua Trust, Te Kopua 2B3 Incorporation, Tainui Awhiro Ngunguru Te Po Ngunguru Te Ao Management Committee, and of the local hapu, to Environment Waikato to pursue this funding application for the purposes specified. As stated at the meeting, the tangata whenua, kaitiaki of the Whaingaroa area and its environs have been concerned for many years about our 'food basket' and have attempted through legal, practical and spiritual means to care for the waterways in our area. Having battled for over thirty years policies pursued by local and territorial authorities, some of our people have reservations and remain cynical as to this latest initiative. However despite that we are willing to support this application and work together in the

¹⁰² WDC official to WRC Whaingaroa Harbour Project Manager, 17 June 1995. Waikato Regional Council File 22 03 35 Vol 2 (supporting papers #24)

¹⁰³ 'Meeting NIWA – Environment Waikato,' 14 June 1995. Waikato Regional Council File 22 03 35 Vol 2 (supporting papers #25)

¹⁰⁴ Blair Dickie, 'Raglan Harbour and Catchment,' 26 June 1995. Waikato Regional Council File 22 03 35 Vol 2 (supporting papers #26)

hope that real progress can at last be made in resolving the long-standing issues relating to the health and sustainability of te moana o Whaingaroa.¹⁰⁵

The first application for the study was rejected by the Ministry for the Environment due to a lack of detailed budget information and the group was invited to submit another application for the next funding round in December 1995.¹⁰⁶ The WRC wrote a letter of thanks to the various groups and organisations that had supported the original application such as Angeline Greensill and the Whaingaroa Ki te Whenua Trust and the Department of Conservation. Later in April 1996 the Tainui Maori Trust Board was also approached regarding the multi-stakeholder study. The Board felt excluded from the study and wanted to be kept involved.¹⁰⁷

Eventually Mana Forbes was employed by the WRC to facilitate tangata whenua input into the multi-stakeholder process. WRC wanted tangata whenua within the harbour catchment and those with an interest in the health of the harbour to be aware of the project and to indicate how they wished to be involved.¹⁰⁸ A number of objectives were agreed to assist Forbes in arranging a number of hui around the harbour:

- 1) that hapu will have an awareness and understanding of the project
- 2) that hapu will recognise their participation is valued and critical for the success of the project
- 3) that hapu will identify the best/preferred way for their participation.¹⁰⁹

Despite Forbes' role in the project, the lack of iwi involvement remained a pressing issue as the project continued. Graham Daborn of Manaaki Whenua addressed the problem in a letter

¹⁰⁵ Angeline Greensill to Blair Dickie, 29 June 1995. Waikato Regional Council File 22 03 35 Vol 2(supporting papers #27)

¹⁰⁶ Murray Bell to Blair Dickie, 31 August 1995. Waikato Regional Council File 22 03 35 Vol 2 (supporting papers #28)

¹⁰⁷ 'Raglan Multi Stakeholder Process – Meeting with Tainui Maori Trust Board,' 22 April 1996; 'Notes from meeting at Huakina Development Trust,' 27 June 1996: Waikato Regional Council File 22 03 35 Vol 3 (supporting papers #29)

¹⁰⁸ Blair Dickie to Mana Forbes, 17 June 1996. Waikato Regional Council File 22 03 35 Vol 3 (supporting papers #30)

¹⁰⁹ Blair Dickie to Mana Forbes, 25 June 1996. Waikato Regional Council File 22 03 35 Vol 3 (supporting papers #31)

to the Huakina Development Trust, a marae based organization that was affiliated to the Tainui Maori Trust Board but based in the Counties Manukau region.

It is a matter of great personal disappointment that we have not been able to date to devise a generally acceptable manner for involvement of local iwi, and to ensure that their interests and concerns are integral to the project. It is obvious that this small project cannot in itself resolve differences that have long histories or are legally complex, but I had ventured to hope that common interests in improving environmental quality and management of natural and human resources in the Whaingaroa catchment might allow progress to be made.¹¹⁰

The Waikato Regional Council struggled with how to engage the Huakina Development Trust without alienating local marae groups in the Whaingaroa Harbour area. A WRC official met with Carmen Kirkwood and Peter Nutall from the Huakina Development Trust who wanted the WRC to fund the Trust directly to commission local tangata whenua around Whaingaroa. The WRC pointed out the problems of friction between the Trust and Tainui Awhiro representatives and the question of who would own the information. The Huakina Development Trust did not support Mana Forbes acting as a liaison for Maori concerns with the project and neither did Tainui Awhiro.¹¹¹ The Trust though had other commitments and was not ready to fully contribute to the process. This may have been true but another factor was that the Trust was based away from Whaingaroa in Pukekohe and local tangata whenua wanted to control the process themselves.

Tangata whenua groups remained reluctant to engage with the Whaingaroa Harbour Project and preferred to develop their own methods of harbour management. Previous efforts at community organization had often co-opted tangata whenua into the project to the point where there was no uniquely tangata whenua perspective and they therefore desired to remain separate in the case of the Whaingaroa Harbour Project. The Project's newsletter stated:

¹¹⁰ Graham Daborn to Carmen Kirkwood, 29 October 1996. Waikato Regional Council File 22 03 35 Vol 3 (supporting papers #32)

¹¹¹ Blair Dickie to Graham Daborn, 25 August 1996. Waikato Regional Council File 22 03 35 Vol Vol 3 (supporting papers #33)

During the first six months of this project we were not successful in setting up an appropriate process to enable iwi of the Whaingaroa catchment to participate fully. Members of the Whaingaroa Ki te Whenua Trust prepared a display for the Information Day. During the next few weeks we intend to find means by which their interests can be served, so that the project can move forward to the benefit of all who live in the Whaingaroa catchment.¹¹²

The Project participants held a number of workshops on a monthly basis to develop ideas regarding the management of the harbour. An evaluation of the workshops by graduate students from the University of Waikato's Department of Psychology revealed that the majority of participants who took part were Pakeha and male while Maori and women in general were under-represented.¹¹³

Members of the Whaingaroa Harbour Project did continue to try and establish strong links with tangata whenua in the area. At the start of February 1997 a hui was held at Poihakena Marae with kaumatua from three of the marae (it is unclear from the sources exactly which ones) in the catchment, a representative from the WRC and Manaaki Whenua personnel from Lincoln and Palmerston North. The WRC representative who attended described it as 'a very successful meeting, laying a foundation for further discussions to plan cooperative activities.' The representative also reported that an iwi management plan for the region was underway and there was interest from tangata whenua because of the similarity in environmental goals, and both agreed to maintain open communication in the future.¹¹⁴

On 22 March 1997 the Whaingaroa Harbour Project had an open community meeting at Te Uku Hall. This was attended by various stakeholders including Angeline Greensill (as the contact for what WRC referred to as '10 hapu') and Junior Mataira of the kohanga reo at

¹¹² 'Raglan Residents Discuss Harbour,' 14 April 1996; 'Community Learns about its Harbour,' 16 December 1996; 'Whaingaroa Catchment News,' Issue 1 March 1997, p 2: Whaingaroa Community Management Folder, WDC Raglan Archives

¹¹³ Annemarie Gallardo, Delwyn Hewson, Simon Webber, 'Evaluation of Kitchen Workshops as a Community Participation Process for the Environmental Management of Whaingaroa (Raglan) Harbour,' December 1996. Waikato Regional Council File 22 03 35 Vol 4 (supporting papers #34)

¹¹⁴ 'The Whaingaroa (Raglan) Project, Interim Report 31 March 1997. Waikato Regional Council File 22 03 35 Vol 5 (supporting papers #35)

Raglan, the Whakamaua Te Aio Education Trust. It is unclear from reports by the WRC what exactly was discussed at the meeting.¹¹⁵ The following meeting held on 10 April 1997 was not attended by either Greensill or Mataira but was attended by another Whakamaua Te Aio Education Trust representative, Tuihana Bosch.¹¹⁶ At the October 1997 meeting of the Whaingaroa Environment Co-ordinating Group Tuihana Bosch and Katerina Mataira attended. Bosch and Mataira also attended the May and July 1998 meetings and other meetings throughout 1998 and early 1999. The participation of tangata whenua though was limited to those individuals until the middle of 1999 when Michael ‘Malibu’ Hamilton began to attend the meetings of Whaingaroa Environment.¹¹⁷

The Ministry for the Environment’s 1998 report on the Whaingaroa Harbour Project noted the fears expressed by some members of the Pakeha community that the WDC had not recognised the importance of the project and thus it had little chance of success. The WDC countered that it was investing time and money into the project.¹¹⁸ On the matter of tangata whenua involvement, the WRC and Manaaki Whenua reported to the Ministry that in an effort to ensure all stakeholders were included progress had been slow. They stated that gaining a line of communication and support from tangata whenua had been ‘very time consuming’. Some consultation had been carried out through the Huakina Development Trust but Angeline Greensill from Whaingaroa Ki te Whenua Trust would eventually work as a facilitator to communicate with local hapu.¹¹⁹

¹¹⁵ Blair Dickie to Mark Buttimore, 2 April 1997. Waikato Regional Council File 22 03 35 Vol 5 (supporting papers #36)

¹¹⁶ ‘Synopsis of Raglan Project Co-ordinating and Communication Group Meeting Held on Thursday 10 April 1997 at Te Uku Hall at 7:30PM.’ Waikato Regional Council File 22 03 35 Vol 5 (supporting papers #37)

¹¹⁷ ‘Notes from WE Meeting 16 June 1999,’ 16 July 1999. Waikato Regional Council File 22 03 35 Vol 10 (supporting papers #38)

¹¹⁸ Mark Buttimore to Fiona Edwards, 27 May 1998. Waikato Regional Council File 22 03 35 Vol 6

¹¹⁹ PH Gresham, ‘Report on the Whaingaroa (Raglan) Harbour Project,’ 21 April 1997. Waikato Regional Council File 22 03 35 Vol 5 (supporting papers #39)

The difficulty that Whaingaroa Environment had with recruiting local tangata whenua into the group was noted in a research paper written by officials from the WRC and Manaaki Whenua. They observed that the Whaingaroa Ki te Whenua Trust, led by Angeline Greensill and affiliated with Tainui Awhiro, had been a co-sponsor of the project and was engaged in preparing an Iwi Management Plan for the Harbour. But they also noted that there had ‘been little success so far in ensuring iwi representation at meetings of the Coordinating Group, although representatives were present at the open meetings, and separate hui held on a local marae.’ The authors believed that the Tainui Maori Trust Board would also become an important stakeholder as the Trust had purchased Harstone Seafoods, the major commercial fishing company operating in Raglan.¹²⁰

Some evidence of outreach to Maori groups that the volunteer participants in the Whaingaroa Harbour Project engaged in was demonstrated by Sonya Leusink, who was writing a section in the project’s report for the Ministry for the Environment. In February 1998 Leusink wrote to Angeline Greensill to ask her to look over a section of the Monitoring Framework that Whaingaroa Environment was developing. Leusink wanted to include an ‘Iwi’ perspective but was unsure how best to do it. Leusink only had one page on the issue and wanted a more significant piece of work.¹²¹ It is unclear from the archives that were consulted whether a response was ever received.

As Michael ‘Malibu’ Hamilton of Ngati Te Wehi (although also associated with Tainui Awhiro) began to attend Whaingaroa Environment group meetings, a tangata whenua view began to appear in the meeting minutes. During the discussion over Liz Stanway and

¹²⁰ Graham Daborn and Blair Dickie, ‘Community-based Environmental Management: Whaingaroa (Raglan) Harbour and Water Catchment,’ *Pacific Coasts and Ports '97: Proceedings of the 13th Australasian Coastal and Ocean Engineering Conference and the 6th Australasian Port and Harbour Conference; Volume 1* (Christchurch, N.Z.: Centre for Advanced Engineering, University of Canterbury, 1997), p 470-474. Waikato Regional Council File 22 03 35 Vol 7 (supporting papers #40)

¹²¹ Sonya Leusink to Angeline Greensill, 17 February 1998. Waikato Regional Council File 22 03 35 Vol 7 (supporting papers #41)

Rick Thorpe's catchment management plan, Hamilton 'made reference to the Hapu Management Plan tangata whenua are required to undertake.' He indicated that if the process of writing Catchment Guidelines for Whaingaroa is a 'genuine process serving the needs of all groups' he could see the potential to work together. Hamilton also stated that he would like to work closely with the contractors to help draw up a work plan.¹²² The Whaingaroa Harbour Project would eventually morph into the Whaingaroa Environment Group, which has continued to try to involve tangata whenua in its volunteer efforts. Whaingaroa Environment still operates today and Malibu Hamilton now functions as a hapu liaison representative.¹²³

Maori participation in the Whaingaroa Environment Group was never as extensive as was initially envisioned by the organisers of the group. Nonetheless consistent efforts were made by community and government organisers such as the WRC and Manaaki Whenua to include Maori in the project. This was limited by the concerns of tangata whenua that their participation in the group would not allow for the retention of uniquely Maori views on the proposed management of Whaingaroa Harbour, as indicated by Angeline Greensill.

2.3 Changes to the Physical Environment

2.3.1 Sedimentation

Estuaries and harbours are naturally prone to infilling by the deposit of sediments. Where the surrounding catchment has an undisturbed forest cover, this infilling occurs at a very slow rate comparable to a geological timescale. However, where the natural cover of the catchment is disturbed, the rate of sedimentation can be many magnitudes faster. This can be at a rate faster than the biological processes can handle, with estuarine vegetation becoming smothered, and the habitat for creatures that inhabit the beds of estuaries becoming

¹²² 'Notes from meeting of Whaingaroa Environment held Wednesday 20th October '99 at Te Uku Hall, 7.30p.m.' Waikato Regional Council File 22 03 35 Vol 10 (supporting papers #42)

¹²³ http://www.waingaroa.org.nz/about_us/, accessed 28 May 2013

overwhelmed. These environmental changes have happened to estuaries and harbours throughout New Zealand, and Whaingaroa Harbour is no exception.

While the native forest cover on the steepplands is degraded by the impact of introduced pests, its ability to hold soil and sediment in place is still considerable. There will be soil loss from the heads of catchments, especially as the higher altitude lands are likely to have higher rainfall during storms. Further downstream, however, the forest has been cleared right to the edge of the stream banks, and there will be sheet erosion off pasture lands as well as bank erosion from denuded stream banks.

While climate and geology are recognised as the major controls on sediment yields, land use also exerts an influence. Small (<10km²) pasture catchments typically export about two to seven times more sediment than an equivalent catchment under mature forest.¹²⁴

There was intensive monitoring by NIWA of two storm events over a four-day period in January 2006. During the first storm 55 millimetres of rain fell over a 14-hour period. The second storm was more intense, with 66 millimetres of rain falling over 7 hours. The first storm delivered enough freshwater to completely displace the saltwater in the upper Waitetuna arm of the harbour, and the rain that fell in the second storm maintained the freshwater state of the arm until about 24 hours after the storm.

Large quantities of sediment were transported downstream and into the harbour. The bulk of the sediment entering the harbour did so abruptly and over a short period of time during and after each storm. What happened to the sediment once it reached the harbour was heavily influenced by the state of the tide at the time. As the tide receded the measuring instruments recorded decreased salinity and increased sediments; the finest of these

¹²⁴ LA McKergow et al, 'Storm fine sediment flux from catchment to estuary, Waitetuna – Raglan Harbour, New Zealand', in *New Zealand Journal of Marine and Freshwater Research*, 2010, Volume 44(1), March 2010, pages 53-76, at p 74

sediments then remained in suspension, coursing up and down the harbour with the tidal changes. Points noted in the study were:

- Bank erosion was the largest contributor of sediments into the streams and from there into the harbour;
- Landslips can be important contributors when they occur, but tend to be confined to the most intense storms when soil is already saturated prior to the storm commencing;
- There was little deposition of sediment on the floodplain or on the beds of streams; most sediment passed into the harbour.

The key findings of the NIWA study were:

- 1) During a 10-year return period rainfall event, 3700 tons of fine sediment left the catchment;
- 2) Mangaokahu Stream contributed half of the fine sediment export;
- 3) Silt-sized particles dominated suspended sediment;
- 4) 70% of the sediment was delivered to the estuary over a 12-hour period; and
- 5) Approximately 25% of the fine sediment was deposited on tidal flats within 3 kilometres of the estuary head.¹²⁵

Other studies have shown that how farming is carried out makes a difference to sediment losses off land. AgResearch's Whatawhata hill country research station, founded in 1949, is located halfway between Hamilton and Raglan on State Highway 23. While it is on the Waikato River side of the Kapamahunga Range and Hakarimata Range watershed between the Waikato catchment and the Whaingaroa Harbour catchment, its proximity is sufficiently close that any research findings at Whatawhata can be readily applied to the Whaingaroa Harbour catchment lands. In a recent NIWA experiment, changes in farm management on 300 hectares of Whatawhata research station land were made in 2000-2001 (after gathering baseline data over the previous five years) in order to improve both economic and environmental performance.

Changes included conversion of the steepest land to plantation forestry; indigenous forest restoration; intensification of the farming enterprises onto easier terrain with better pasture production; changes in stock type; poplar planting for soil stabilisation; and exclusion of livestock from streams.

¹²⁵ LA McKergow et al, 'Storm fine sediment flux from catchment to estuary, Waitetuna – Raglan Harbour, New Zealand', in *New Zealand Journal of Marine and Freshwater Research*, 2010, Volume 44(1), March 2010, pages 53-76, at p 74

The results, as reported in 2007, have been:

The per hectare economic surplus for the pastoral enterprise improved from 30% below industry average to 13% above. The forestry enterprise will further improve economic performance in the long term. There were reductions in the export of suspended sediment (76%), total phosphorus (62%) and total nitrogen (33%). Water clarity has increased, stream temperature has declined, and invertebrate indices indicate improvements in the fauna.¹²⁶

The biggest reductions in sediment levels came from fencing off the edges of waterways and de-stocking the steepest part of the trial area. These results demonstrate that, while the impact of dairying on the environment may attract many of the headlines, hill country pasture farming also has environmental impacts on waterways, and these impacts can be reduced with the right type of land management:

Farmers and resource managers need well-documented case studies to underpin land management decisions. This study demonstrated economic and environmental benefits from applying an ICM [integrated catchment management] approach to define and meet multiple goals for sustainable use of hill land resources by a combination of better matching land use and livestock enterprises to land capability, and riparian management. Its findings have broad application to management of large areas on hill lands in New Zealand. Different aspects of response to ICM implementation occur at a range of time scales, and this should be recognised in the design of monitoring schemes.¹²⁷

Sometimes high sediment loadings can be sourced back to catchment engineering works carried out by the catchment authority. The NIWA report on sediment movement during the 2006 storms noted:

Bank erosion may also have been an important sediment source on the main-stem upstream of the School site. In early 2005 willows were removed (using excavators) from the bed and both banks between the Kaitikako Stream tributary and the school site. Widespread bank failure, particularly slumping, was observed during the winter of 2005 and boosted the in-channel sediment store.¹²⁸

¹²⁶ JM Quinn et al, 'Whatawhata Catchment Management Project: the story so far', in *Proceedings of the New Zealand Grassland Association*, Volume 69, 2007, pages 229-233, at p 229.

¹²⁷ JM Quinn et al, 'Whatawhata Catchment Management Project: the story so far', in *Proceedings of the New Zealand Grassland Association*, Volume 69, 2007, pages 229-233, at p 233.

¹²⁸ LA McKergow et al, 'Storm fine sediment flux from catchment to estuary, Waitetuna – Raglan Harbour, New Zealand', in *New Zealand Journal of Marine and Freshwater Research*, 2010, Volume 44(1), March 2010, pages 53-76, at p 73.

The sediment transported down from the catchment ends up in Whaingaroa Harbour. Today mudflats exposed at low tide comprise about 70% of the harbour area.

Sediments range from clean well-sorted sands in the beaches, dunes, channels and bars in the lower harbour, to mainly muddy sands, sandy muds and muds in the extensive tidal flats of the middle and upper harbour. Gravelly sediments occur sporadically as the product of shore erosion, and as lag and dump deposits in channels....

A large proportion of the tidal flats in Raglan Harbour are simply sediment-covered rock platforms formed by active erosion by wetting and drying of coastline ... mudstones; cliff recession rates of about 2 [centimetres per year] are indicated. Only a thin veneer of sediment covers the modern shore platform which is up to 100 m wide and has been cut during the last 5000 years, since when Raglan Harbour has acted mainly as a sediment trap.¹²⁹

A research study in 2005 aged the sediments in Whaingaroa Harbour, in order to identify those sediments deposited before human settlement (when the catchment was covered in native forest), and those deposited during the main land clearance era (approximately 1880-1925). Identification was done by measurements of decay of radio-isotopes (carbon-14, lead-210, caesium-137), and analysis of pollen samples. The sediment veneer on the rock platforms can be up to 8 metres thick, of which only the top 2 metres has been deposited in the last 6000 years. Whaingaroa Harbour had already substantially infilled by the time Maori arrived some 700 years ago, so that the harbour landscape of extensive mudflats and relatively narrow open-water channels at low tide was well established by then. In relation to the post-1840 era, the study found differences in the rates of sedimentation entering the harbour from the Waitetuna catchment and from the Waingaro catchment. In the Waitetuna arm of the harbour late nineteenth and early twentieth century land clearance increased the rate of sedimentation (from its pre-human rate) threefold (from an average of 0.35 millimetres/year to an average of 1.1 millimetres/year. The rate has increased still further since 1990 (to an average of 2.5 millimetres/year, though with a peak of 8

¹²⁹AM Sherwood and CS Nelson, 'Surficial sediments of Raglan Harbour' in *New Zealand Journal of Marine and Freshwater Research*, Volume 13(4), 1979, pp 475-496

millimetres/year at a site in Okete Bay) as a result of plantation forestry becoming a land use in the catchment. By contrast, in the Waingaro arm of the harbour, there has been negligible sediment accumulation in the past 150 years, and modern era indicators were largely absent; this is attributed to wave action maintaining sediments in suspension, and to tidal flows of water transporting sediments down-harbour. Elsewhere in the harbour, sheltered embayments and tidal creeks were recording continuing sedimentation, the conclusion for these areas being that “these sheltered sub-environments are more susceptible to the effects of future changes in the quantity and type of sediment runoff associated with human activities in their land catchments”¹³⁰.

The ability for the waters of the harbour to retain finer sediment particles in suspension and transport them down-harbour is apparent in the plume of turbid sediment-laden water extending out into the ocean from Whaingaroa Harbour after storms. This sediment-laden water is carried out during falling tides. At high tide the harbour holds 46 million cubic metres of water, while at low tide it holds 29 million cubic metres¹³¹. The tidal flushing carries large quantities of sediments beyond the harbour and into the open ocean. In sedimentation terms, and taking a long geological timeframe, the harbour is nearing a state of maturity, where the sediments are generally prehistoric with only a small amount of additional accumulation during the era of human occupation. However, there are localised variations to this, with accumulation continuing in the Waitetuna arm and in sheltered embayments.

2.3.2 Water quality

The salinity of Whaingaroa Harbour is reasonably high, because of the extent of tidal flushing, and the low proportion of the freshwater contribution from inflowing streams. This

¹³⁰ A Swales et al, *Whaingaroa (Raglan) Harbour: sedimentation and the effects of historical catchment landcover changes*, 2005, Waikato Regional Council Technical Report 2005/36, pp iv-vi

¹³¹ A Swales et al, *Whaingaroa (Raglan) Harbour: sedimentation and the effects of historical catchment landcover changes*, 2005, Waikato Regional Council Technical Report 2005/36, p 6

low proportion means that abstraction of freshwater from the contributing streams, for instance for irrigation, while impacting on the stream environment, is unlikely to have any significant effect on the salinity of the harbour waters. However, the freshwater inflows can be contaminated with pollutants because of human activity in the catchment.

The sediments sourced from erosion of the land, which can be increased by land clearance, contribute phosphorus to the harbour waters. When that is accompanied by nitrogen sourced from livestock excreta and fertilisers, the combination of nutrients can provide conditions encouraging growth of algae in particular. Algal growth uses up oxygen in the water, which is then not available for other estuarine life forms. In Whaingaroa Harbour the highest concentrations of phosphorus have been found close to the rivermouths, in finer-grained sediments.¹³²

In a 2001 publication, Whaingaroa Harbour is rated “moderate to high” in its levels of nutrients, with “phosphorus and nitrogen ... sometimes at levels that can cause nuisance weed growth.”¹³³ In 2008 Waikato Regional Council tested five sites in Whaingaroa Harbour for the presence of heavy metals and other pollutants. It found that:

- The concentrations of most trace elements were at the lower end of their estimated natural ranges, and no trace elements within the sediments were present in concentrations which exceed ANZECC (2000) ISQG-low guideline values.
- The concentrations of trace elements tended to be higher in the southern part of the harbour than in samples from elsewhere in the harbour.
- Trace quantities of some PAHs (fluoranthrene, phenanthrene and pyrene) were detected in the composite sample from around Ponganui Creek. This sample is the closest to Raglan township of all samples collected. The PAH results may indicate a minor effect from the township.

¹³² Pattle Delamore Partners Ltd, *Trace elements in the sediment of Waikato west coast estuaries*, Waikato Regional Council Technical Report 2009/08, 2009, p 31

¹³³ Ministry for the Environment, *Managing waterways on farms: a guide to sustainable water and riparian management in rural New Zealand*, Ministry for the Environment, 2001, pp 135-136. For nitrogen, moderate levels are defined as containing 0.1-0.5, and high levels as containing 0.5-2.0 grams per cubic metre of water. For phosphorus, moderate levels are defined as containing 0.01-0.04, and high levels as containing 0.04-0.1 grams per cubic metre of water.

- No organochlorine pesticide residues were detected in Raglan Harbour.¹³⁴

When it comes to water pollution, however, it is bacterial pollution that tends to be of most interest. This is particularly so for Whaingaroa Harbour, where the Raglan wastewater treatment plant discharge has comprehensively dominated the attention of tangata whenua over the last 40 years. The case study on the treatment plant's water rights documents the sustained and continuing failure of the treatment plant to comply with its water right conditions. This has included instances of discharge of treated effluent on a rising tide, which allows pollution to travel up-harbour. Even discharge on a falling tide runs the risk of pollution initially travelling out towards the ocean and then being carried up-harbour once the tide turns.

Bacterial pollution is not confined to the treatment plant effluent. Testing of the waters of the contributing streams to the harbour all consistently record high levels of *E. coli*. According to a Ministry for the Environment publication:

Bacterial concentrations in the upper Whaingaroa Harbour have periodically been extreme, and this too is verified by stream monitoring data. The Ohauti and Waitetuna Streams have recorded average *Enterococcus* counts near or above 100/100 ml, when a reading of 33/100 ml is considered the maximum safe level for contact recreation (i.e. swimming). Some readings during the year reached counts of 60,000/100 ml in the Ohauti Stream, and 520 in the Waitetuna. With bacterial counts as high as this in flowing streams, it is no surprise that levels as high or higher than this occur at the upper end of the harbour where tidal mixing with fresh water is limited.

By comparison with other test results from throughout New Zealand, Whaingaroa Harbour catchment waterways have “very high” levels of bacteria, which become “accentuated by poor mixing of water in the harbour”. The report goes on to note that “bacterial levels of this magnitude pose a serious human health hazard”:

¹³⁴ Pattle Delamore Partners Ltd, *Trace elements in the sediment of Waikato west coast estuaries*, Waikato Regional Council Technical Report 2009/08, 2009, pp iii-iv

Bacterial counts as high as those recorded in the pastoral farm catchments are most likely to arise from faeces washed in surface runoff from pastures, and livestock with direct access to streams, seepage zones and wetlands. The greatest levels of stream and harbour contamination are likely to occur following heavy rain when faecal material is washed by surface water from hillsides as well as from the riparian area.¹³⁵

Besides stock effluent and bacteria getting into the harbour via the contributing freshwater streams, there is also water pollution caused by encroachment of farm stock, and wild animals such as goats, around the edge of the harbour. Because of birdlife on the harbour, bacterial contamination of the waters of Whaingaroa Harbour can never be completely eliminated, though with better stock management it could be substantially reduced.

2.3.3 Estuary edge vegetation

Around the edge of the estuary below high water mark, there have been changes to the vegetation, including the establishment of introduced species. Waikato Regional Council has carried out two vegetation surveys, in November 2004 and 2011-2012. This involved mapping of four different estuarine communities:

- Saltmarsh, sub-categorised into rush, saltmarsh ribbonwood, and sea meadow communities
- Mangrove
- Seagrass
- Weeds, specifically saltwater paspalum (*Paspalum vaginatum*) and cord grass (*Spartina* spp)

Above the high tide level and in freshwater environments, weed species include crack willow and pampas grass.

The report on the 2004 survey made a number of general observations, including:

- There are scattered young mangroves up the head of some south – south western bays/arms. Larger mangroves were found to the north – north east of harbour, especially up the Waingaro arm where trees reached 3-4 m high.
- Seagrass was restricted to around the town peninsula, except for small patches in Birds Bay/Marotaka Bay and the upper Waingaro arm.

¹³⁵ Ministry for the Environment, *Managing waterways on farms: a guide to sustainable water and riparian management in rural New Zealand*, Ministry for the Environment, 2001, pp 134-135

- Saltwater paspalum was common around the harbour edge, and often dominated the saltmeadow community zone.
- Two small spartina sites were found in addition to the existing three known sites.¹³⁶

Besides these observations, the report also identified numerous instances where livestock have unfettered access to the harbour, leading to trampling and browsing of the estuary-edge vegetation.

Spartina beds had been sprayed by the Department of Conservation. The 2004 report noted:

The small bay to the east of Haroto Bay had a patch of spartina showing on the 2002 aerial [photo], but this has since been sprayed and there are now only scattered clumps surviving....

On the southern side of the Narrows [are] three small bays. A new small patch of spartina at the head of the western of these small bays, near to the existing spartina site amongst the limestone headland of the bay....

The large spartina patch at the back of [Okete Bay] has been sprayed since the 2002 aerial photo was taken, but approximately 10 small clumps were surviving.... The largest most intact patch of sea meadow found in the Raglan Harbour was on the south side of the spit with houses. This patch contained mainly sea primrose and glasswort. However it was threatened by the presence of a new small area of short-statured spartina. Sea meadow areas like this example seem to be rare as they are often out-competed by saltwater paspalum.¹³⁷

There were no control measures being carried out against saltwater paspalum:

As this weed is so widespread, it is recommended that saltwater paspalum be controlled initially around significant habitats (such as the sea meadow on the house spit at Okete).¹³⁸

With respect to mangroves, the 2004 report stated:

The establishment of mangroves is likely to assist in reducing the wave erosion of the harbour edges as well as stabilising sediments, and therefore will help improve water

¹³⁶ M Graeme, *Estuarine vegetation survey – Raglan Harbour*, Waikato Regional Council technical report 2005/44. 2005, p 2

¹³⁷ M Graeme, *Estuarine vegetation survey – Raglan Harbour*, Waikato Regional Council technical report 2005/44. 2005, pp 5-6

¹³⁸ M Graeme, *Estuarine vegetation survey – Raglan Harbour*, Waikato Regional Council technical report 2005/44. 2005, p 8

quality. However, it is unlikely mangroves would be hardy enough to become established along the most open wave-prone coastlines (e.g. around Pairere Point).¹³⁹

The same biologist conducted the December 2011 – March 2012 survey, using the same methodology, thereby enabling some remarks to be made about any changes to the vegetation. The report's findings about weed species were:

- The exotic grass saltwater paspalum was commonly found intermingling with or dominating thin or disturbed areas of rushland and sea meadow
- Thick undisturbed rushland seems to be able to withstand saltwater paspalum invasion.
- Spartina control within the harbour has been very successful, with only a few scattered spartina plants found during this survey.
- Sign of saltmarsh receding was seen in various places around the harbour, but also there was sign of active growth in other areas.
- Most of the harbour had been fenced off to restrict stock access, with only a few areas seen where stock still had access to the harbour and there was associated pugging, dung and grazing.¹⁴⁰

Of the estuary-edge threats to the harbour, the report stated:

Sedimentation of the harbour from the catchment is an ongoing issue. Measures such as fencing stream banks and seepage areas, and stabilisation of erodable banks with protective forest cover need to be implemented throughout the catchment. There has been some good progress with this since the previous survey in 2004.

Direct stock damage to the estuarine vegetation has significantly reduced since the last survey, however there are still areas where improved riparian protection measures are needed. Stock pugging, browsing and the transferral of saltwater paspalum are all threats to the health of estuarine vegetation and the other values of the harbour.

Goats are a wide ranging problem along the coastal edge. They are having a detrimental effect on the regeneration of the riparian coastal forest, however trampling and browsing of the estuarine vegetation communities by goats was also noted in a number of areas. They will also be another possible vector for the further spread of saltwater paspalum.

¹³⁹ M Graeme, *Estuarine vegetation survey – Raglan Harbour*, Waikato Regional Council technical report 2005/44. 2005, p 8

¹⁴⁰ M Graeme, *Estuarine vegetation survey – Raglan (Whaingaroa) Harbour*, Waikato Regional Council technical report 2012/35. 2012, p 12

The spread of saltwater paspalum is the most pressing threat to the ongoing health of estuarine vegetation communities within the harbour. The priority management focus should be to keep saltwater paspalum out of the biodiversity hotspots (e.g. Waingaro River, Ohautira River, Waitetuna River and Pokohui Creek arms), and plan how to limit the loss of sea meadow communities around the exposed coast line.

A number of weed species were noted during this survey within the coastal riparian margins. These are an increasing threat to the ecological integrity of the coastal forest.¹⁴¹

2.4 Management of customary fisheries

2.4.1 Fish and shellfish

Tainui and the neighbouring hapu around Whaingaroa Harbour established agreements before the arrival of Europeans which allowed each whanau access to mahinga kai areas and gave responsibility to each whanau for protecting those areas from environmental degradation. As Tainui notes in their Oral and Traditional History Report, ‘mana and tapu ruled gathering practices... [and] although the fisheries were abundant, they were also strictly managed according to season and occasion.’¹⁴²

The turbid nature of Whaingaroa Harbour waters, with large amounts of sediment in suspension in the water throughout the estuary and extending out to sea, has consequences for marine life:

Episodic increases in SSC (suspended sediment concentrations) and sediment erosion and deposition during floods and wave events, are likely to affect the composition of intertidal benthic macrofaunal communities in the Waingaro arm of the harbour in particular. Species sensitive to elevated water turbidity (e.g. suspension-feeding bivalves) and relatively immobile species, such as a number of estuarine shellfish (e.g. cockles), may be under-represented in these intertidal sediments. The types of benthic animals that are better adapted to mobile and muddy substrates include a number of crustacean and worm species.¹⁴³

¹⁴¹ M Graeme, *Estuarine vegetation survey – Raglan (Whaingaroa) Harbour*, Waikato Regional Council technical report 2012/35. 2012, p 71

¹⁴² Wai 898, #A99, pp 80-84

¹⁴³ A Swales et al, *Whaingaroa (Raglan) Harbour: sedimentation and the effects of historical catchment landcover changes*, 2005, Waikato Regional Council Technical Report 2005/36, p 50-51

These features have also been recorded as matters to be aware of in general terms throughout New Zealand. A national assessment of the impacts of catchment land use on fish life in coastal waters in 2010 noted:

In New Zealand, arguably the most important land-based stressor is sedimentation, including both suspended sediment and deposition effects, and associated decreases in water clarity (which may also be driven by nutrient effects). Impacts may be direct on the species themselves, such as clogging of the gills of filter feeders and decreases in filtering efficiencies with increasing suspended sediment loads (e.g. cockles, pipi, scallops), reductions in settlement success and survival of larval and juvenile phases (e.g. paua, kina), and reductions in the foraging abilities of finfish (e.g. juvenile snapper). Indirect effects include the modification or loss of important nursery habitats, especially those composed of habitat-forming (biogenic) species (e.g. green-lipped and horse mussel beds, seagrass meadows, bryozoan and tubewell mounds, sponge gardens, kelp/seaweeds, and a range of other 'structurally complex' species)....

International work has shown that eutrophication has the potential to initially increase primary productivity (phytoplankton and macrophytes), and then to create profound cascades of effects into marine ecosystems, including loss of seagrasses, and eventually macrophytes, increases in phytoplankton blooms that reduce light levels reaching the sea floor, and subsequent oxygen depletions as blooms die and increase detrital levels on the sea floor, and large-scale losses of benthic prey assemblages that support finfish fisheries. Factors that moderate the influence of these processes include tidal streams, the degree of water transport across different areas, and the presence of large numbers of filter-feeding bivalves. Loss of such bivalve populations, (e.g. from over-harvesting or sediment impacts, may exacerbate other land-based stressors, such as eutrophication, through reducing the resilience of local systems. Little work has been done on the potential impact of eutrophication on coastal fisheries in New Zealand, though it may be modest relative to other areas of the world. Other pollutants are generally associated with urbanisation, and as such generally more localised in extent, and at relatively low, though sometimes ecologically influential, concentrations compared to other industrialised countries.¹⁴⁴

Since 2001 Waikato Regional Council has surveyed the benthic (marine bottom) fauna at five sites in Whaingaroa Harbour, as well as at a further five sites in the Firth of Thames, for a Regional Estuary Monitoring Programme. The aim is to see if there are any

¹⁴⁴ MA Morrison et al, *A review of land-based effects on coastal fisheries and supporting biodiversity in New Zealand*, New Zealand Aquatic Environment and Biodiversity Report No. 37, Ministry of Fisheries, 2009, pp 3-4

changes in populations over time of 26 different indicator species (3 crustacean arthropods, 6 bivalves, 2 gastropods, 1 anthozoan, and 14 polychaete worms). The communities are considered to be stable, with little change that cannot be accounted for by natural variability¹⁴⁵. While this suggests no recent deterioration in the environment of the harbour, ten years of results are insufficient to determine the degree to which the harbour environment is of a lesser quality compared to its pre-human or its pre-European condition.

Today the most abundant species in the harbour that was traditionally relied upon for kaimoana is the cockle. Whether this was the main harvest in pre-European times, or whether there were other species of greater importance than that are less readily available today because of the European-era environmental changes to the harbour, is not known. Other species present that are a food source include flounder, mullet, mussels and oysters. The monitoring programme shows that cockles have been maintaining their numbers over the last ten years¹⁴⁶.

There are some species of fish that transit or spend only part of their life in Whaingaroa Harbour. These include tuna and inanga. They rely for their survival on the ecological health of all the different habitats they rely upon, and a change in just one of their habitats can potentially put their numbers at risk. For those fishes that spend part of their lives in the freshwater streams that flow into the harbour, there is a concern that poor construction of culverts across the streams could upset their passage up and down the

¹⁴⁵ N Singleton, *Regional Estuary Monitoring Programme (REMP) data report: benthic macrofauna communities and sediments - July 2008 to April 2009*, Waikato Regional Council Technical Report 2010/37, October 2010

¹⁴⁶ N Singleton, *Regional Estuary Monitoring Programme (REMP) data report: benthic macrofauna communities and sediments - July 2008 to April 2009*, Waikato Regional Council Technical Report 2010/37, October 2010. Two theses about cockles in Whaingaroa Harbour were identified during research for this report, but time did not permit them being examined:

- CL Connew, *Towards the sustainable management of the cockle (*Austrovenus stutchburyi*) population in Raglan Harbour, New Zealand*, University of Waikato MSc thesis in Technology (Environmental), 2000.
- HA Kettles, *Survival and growth of transplanted cockles (*Austrovenus stutchburyi*) at contrasting sites in Raglan Harbour, New Zealand: implications for reseeding*, University of Waikato MSc thesis in Biological Sciences, 2000.

streams. Waikato Regional Council undertook an investigation in 2000-2001 of culverts, weirs and floodgates in the Whaingaroa Harbour catchment to determine how much of a problem this might be¹⁴⁷. Of 194 structures inspected, 59% provided some form of barrier to fish passage due to poor design and/or installation. However, many of these barriers could be remedied at relatively low cost. Both Waikato District Council and Waikato Regional Council have progressively carried out remedial works since the survey was carried out¹⁴⁸. How many barriers to fish passage still exist today in the Whaingaroa catchment is not known.

The impact of riparian and harbour-edge revegetation planting on whitebait spawning around Whaingaroa Harbour has not been studied. It is likely to have been beneficial, because the exclusion of stock and the absence of grazing pressure allows a higher sward rather than a cropped sward. The revegetation also provides shade. However, whether the composition of species planted best suits the needs of whitebait, or whether some adjustment to composition would benefit whitebait spawning further, is not known.

2.4.2 Customary fisheries legislation and regulations

The Marine Department's regulation of harbours also extended to the management of fisheries before 1972. There were fishing regulations issued every few years but there was little active regulation in the districts by the Marine Department due to both a lack of human and financial resources and a perception that the fish resource was endless. In 1972 the Fisheries Branch of the Marine Department came under the responsibility of the newly established Ministry of Agriculture and Fisheries.

Customary fisheries in the North Island are managed under two key pieces of legislation: the Fisheries (Amateur Fishing) Regulations 1986 and the Fisheries (Kaimoana

¹⁴⁷ D Speirs, *Fish passage at culverts: a survey of the Coromandel Peninsula and Whaingaroa catchment (11/00-04/01)*, Waikato Regional Council technical report 2001/08, 2001

¹⁴⁸ Waikato District Council, *State of the environment report 2009*, 2009, p 85

Customary Fishing) Regulations 1998. In 1986, the Crown introduced the Quota Management System (QMS) to the commercial fishing industry to improve the management of the fisheries resource and to conserve the fish stock. In the same year legislation concerning non-commercial fisheries reform, the Fisheries (Amateur Fishing) Regulations 1986, was passed in Parliament and it separated amateur fishing interests from commercial interests in terms of the total allowable catch designated under the QMS.¹⁴⁹ Section 27 of the Fisheries (Amateur Fishing) Regulations Act 1986 allowed the taking of fish for a hui or tangi as long as the appropriate Fishery Officer was consulted.¹⁵⁰ While the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 was developed to address commercial fisheries claims, it also led to a slight modification of Section 27 of the Amateur Fishing Regulations Act 1986. This modification allowed for the delegation of Crown authority for approving the taking of fish for a hui or tangi to Maori Committees or kaitiaki and expanded the scope of such activities to also include any ‘traditional non-commercial fishing use.’¹⁵¹ The Fisheries (Customary Fishing) Notice 2006 separated hui and tangi from traditional non-commercial fishing uses into its own sub-category that allowed for fishing applications to be submitted directly to recognised Marae Committees, Maori Committees, Runanga or Maori Trust Boards.¹⁵² As a result the authority to approve activities that came under the definition of hui or tangi was delegated directly to Maori while the management of other traditional non-commercial fishing uses still requires the Crown to delegate its authority.

The Fisheries (Kaimoana Customary Fishing) Regulations 1998 and the Fisheries (South Island Customary Fishing) Regulations 1999 were designed to provide greater Maori control over customary fishing practices in their rohe moana. In order to enact the provisions in the regulations noted above the Ministry of Primary Industries, formerly the Ministry of

¹⁴⁹ *Fisheries Amendment Act 1986*, Section 28 c(1)

¹⁵⁰ *Fisheries (Amateur Fishing) Regulations 1986*, SR 1986/211

¹⁵¹ *Treaty of Waitangi (Fisheries Claims) Settlement Act 1992*, Section 37(1)

¹⁵² *Fisheries (Customary Fishing) Notice 2006*, F357

Fisheries, confirms and appoints these guardians. Maori in a particular region must agree on who holds tangata whenua status and appoint tangata kaitiaki or tangata tiaki to act as guardians of their rohe moana. In addition, Maori can establish special reserves or mataitai in a particular area within their rohe moana that allow them to modify the rules associated with customary fishing practices in that reserve. As more areas are defined as mataitai under this legislation, the default provisions contained in Section 27 of the Fisheries (Amateur Fishing) Regulations 1986 will become obsolete. While no mataitai reserves have been established in and around Whaingaroa Harbour, a rohe moana under the Fisheries (Kaimoana Customary Fishing) Regulations 1998 has been established by various groups around Whaingaroa Harbour including Tainui Awhiro, Ngati Tahinga, Ngati Tamainupo and Ngati Mahanga.¹⁵³

In 1999 Whaingaroa Environment Group co-ordinator Sarah Moss received a WRC contract to create a fisheries management plan for Whaingaroa Harbour. A group led by Angeline Greensill representing Tainui coastal hapu was also working on a fisheries management plan in relation to customary fishing. The two groups have since been working together to develop an accord covering the management of the harbour fishery. Greensill commented that ‘a lot of the things they [the Harbour management group] say, we agree with. It’s common sense. We will do a plan and come together with them in the future.’¹⁵⁴

Under the Fisheries (Kaimoana Customary Fishing) Regulations 1998 Aramiro Marae, Mai Uenuku ki te Whenua Marae, Poihakena Marae and Waingaro Marae manage customary fishing around Whaingaroa Harbour. Under regulation 5 of the Fisheries Regulations 1998 a number of different people have been appointed as tangata kaitiaki for Whaingaroa Harbour: Paddy Taipari Kaa, Maioha Kelly, Ledgeman Thompson, Dave Huirama, Kaiwaka Riki, Quinton Moore, Hemi Rupapere, Basil Huirama Osborne, Beau

¹⁵³ NABIS map, <http://www.nabis.govt.nz/Pages/default.aspx>, accessed 27 May 2013

¹⁵⁴ ‘Work underway on management plan at Raglan,’ *Hamilton Press*, 12 July 2000. Waikato Regional Council File 22 03 35 Vol 11 (supporting papers #43)

Fontaine Tengu and Geoffrey Tengu.¹⁵⁵ Unfortunately, members of all four marae that manage customary fishing around Whaingaroa Harbour could not be reached for comment about this authority or whether they feel it adequately meets their concerns with the management of customary fishing. Nonetheless some claimants have commented that the monitoring and enforcement done by the Ministry of Primary Industries needs to improve.¹⁵⁶

An important issue for tangata whenua has been the lack of regulation by the Ministry of Fisheries' (now the Ministry of Primary Industries') officers to police recreational fishermen. While Maori customary fisheries takes are scrutinized to a high degree, non-Maori recreational use seems to be comparatively unregulated. This concern with the extent of non-Maori recreational takes was expressed in a submission by 'Nga hapu o Whaingaroa' on the proposed Customary Fisheries Management Regime for the Whaingaroa Coastal Region. While the focus of their submission was on Maori participation in the management of the local customary fishing regime, there were other activities that would impact directly or indirectly upon the environment. The submitters contended that 'Maori must have an input into the promulgation and monitoring of other fisheries and environmental policies or regulations, which impact upon Maori customary fishing rights.' Furthermore they advocated that there was a 'need for central, regional and local government to accord Maori entities, special status to allow direct participation in the development, monitoring and review of other fisheries and environmental policies or regulations which impact upon Maori customary fishing.'¹⁵⁷ Their submission was rejected by the Ministry of Fisheries but it is unclear from the archives consulted what the reasoning behind the rejection was.¹⁵⁸

¹⁵⁵ Email from Taroi Rawiri to the author, 27 May 2013 (supporting papers #44)

¹⁵⁶ Personal communication with Angeline Greensill, 17 March 2013

¹⁵⁷ Nga hapu o Whaingaroa, 'A submission on the Proposed Customary Fisheries Management Regime for the Whaingaroa Coastal Region,' April 1998. Waikato Regional Council File 22 03 35 Vol 8 (supporting papers #45)

¹⁵⁸ 'WE Meeting Notes,' 15 July 1998. Waikato Regional Council File 22 03 35 Vol 8 (supporting papers #46)

2.4.3 Fisheries Officers

Concerns had been expressed by not only Maori but all Raglan residents about the pressure on the finfish and shellfish resources in Whaingaroa Harbour. When the Ministry of Fisheries was approached to provide a full time officer in December 1997 the Ministry stated that there was little scope for this. Instead the Ministry recommended that the WRC should encourage individuals within the community to take on the role of Honorary Fishery Officer.¹⁵⁹ Fred Lichtwark had been Raglan's sole honorary fisheries officer between 1990-1997 and was planning to resign in 1998 but local tangata whenua representatives convinced him to continue and work with a new intake of trainees. All the trainees were Maori and were trained at Poihakena Marae. Fisheries Officer Tom Teneti co-ordinated the training course for the Ministry of Fisheries.¹⁶⁰

The recruitment drive for honorary fisheries officers addressed an evident need as, in January 1998, Ministry of Fisheries' officers seized over 1,600 shellfish that had been part of an illegal fishing operation. Fisheries Surveillance Officer Tom Teneti stated that the shellfish were not being claimed under Maori customary fishing rights and that 'another ethnic group' was involved. Later in the month 14,500 cockles taken by three people were seized and a few days later four others were caught with 8,000 mussels. In 1997 one party was caught taking approximately 3,500 cockles from Raglan.¹⁶¹ These incidents showed the need for increased regulation.

2.4.4 Dragging at Pipirua

The 'Tainui Oral and Traditional History Report' notes the importance of mussels to tangata whenua at Whaingaroa, and especially the mussel reef Pipirua. The reef is adjacent to

¹⁵⁹ Raglan Community Board Report, 'Fisheries Officers – Raglan,' 24 December 1997. Raglan Harbour – General Vol 2 1995-1999, WDC Ngaruawahia Archives (supporting papers #47)

¹⁶⁰ Anne Beston, 'Trainee fisheries officers boost patrols of Raglan,' *Waikato Times*, 3 February 1998. Waikato Regional Council File 22 03 35 Vol 7 (supporting papers #48)

¹⁶¹ Philippa Stevenson, 'Huge shellfish plunder uncovered,' *Waikato Times*, 28 January 1998. Waikato Regional Council File 22 03 35 Vol 7

Te Kopua and ‘provided truckloads of kutai to feed large gatherings of people at the Koroneihana and as food for snapper.’ James Rickard has described Pipirua as a former ‘island that was covered in manuka’ and was a ‘thick and rich mussel bed.’ Tangata whenua have stated that a change in fisheries laws in the 1960s allowed for ‘dragging’ which destroyed Pipirua. Tainui Awhiro commented in their report that ‘numerous business people and others were granted fishing licenses under the 1908 Act to catch fish for sale which they did right up until the laws changed in 1986. ‘In 1962 licenses were relaxed to encourage growth in the fishing industry. It is during this period that tangata whenua noticed the increase in fishing activity around Pipirua which led to their complaints to both the police and later to their MP Mrs Iriaka Ratana.’¹⁶²

James Rickard’s brief of evidence elaborates on the developments around Pipirua in greater detail than the Tainui Oral and Traditional History Report, specifically the complaints that were made to the police regarding over-fishing at Pipirua.

In the [19]60’s, a Pakeha fisherman found out about Pipirua and applied for a license to take mussels. He was granted 17 sugar bags a week. The fisherman was not only greedy, he was also lazy. Instead of using sugar bags, he would come down with huge sacks and fill up 17 of them. Also, instead of just picking them at low tide, like we did, he would take his boat out and dredge the mussels at night. Locals were annoyed with this happening and there was a lot of complaining. One night we went down to meet his boat the jetty in town. He had more than his quota so we went to get the local cop. The cop wasn’t happy with us for waking him up and dragging him out at 9 o’clock at night.¹⁶³

The author has unfortunately been unable to locate documents regarding these complaints but this may be a result of the medium in which these complaints were made. James Rickard notes in his brief of evidence that Ratana had visited Tainui Awhiro directly at Poihakena Marae to hear their complaints regarding dragging at Pipirua.

¹⁶² ‘Dragging is a term used by tangata whenua to describe dredging using mechanical equipment which is towed behind a boat over the mussel bed. This method takes everything in its path, breaks shells and destroys the habitat. Similar to bottom trawling. Up until the 1960’s no one dredged Pipirua.’ Wai 898, #A99(d), pp 3-4

¹⁶³ Wai 898, #M28, p 11

2.4.5 Developments at Manu Bay

As the popularity of Whaingaroa as an international surfing destination increased during the 1960s and 1970s there were increasing pressures from developers and individuals who, according to Malibu Hamilton, ‘would just come in and act like they owned the place.’ Manu Bay was originally known as Waikeri and it was the site of a major customary fishery. The Riders Incorporated Society from Hamilton put a little tin shed at Manu Bay and tried to develop their headquarters there. Then recreational fishers managed to get a concrete boat ramp inserted into the bay.¹⁶⁴ This impacted the surf but more importantly Malibu Hamilton alleges that it destroyed kaimoana beds there. ‘Eventually the place became so popular that the Council acquired the land and turned it into a reserve. Rather than protect the Maori interests in the land that they owned, it was just better to get it off them.’¹⁶⁵

¹⁶⁴ Raglan County Council County Clerk to Secretary of Marine, 28 October 1971. File No. 54/8/91, WRC archives.

¹⁶⁵ Wai 898, #M26, p 4

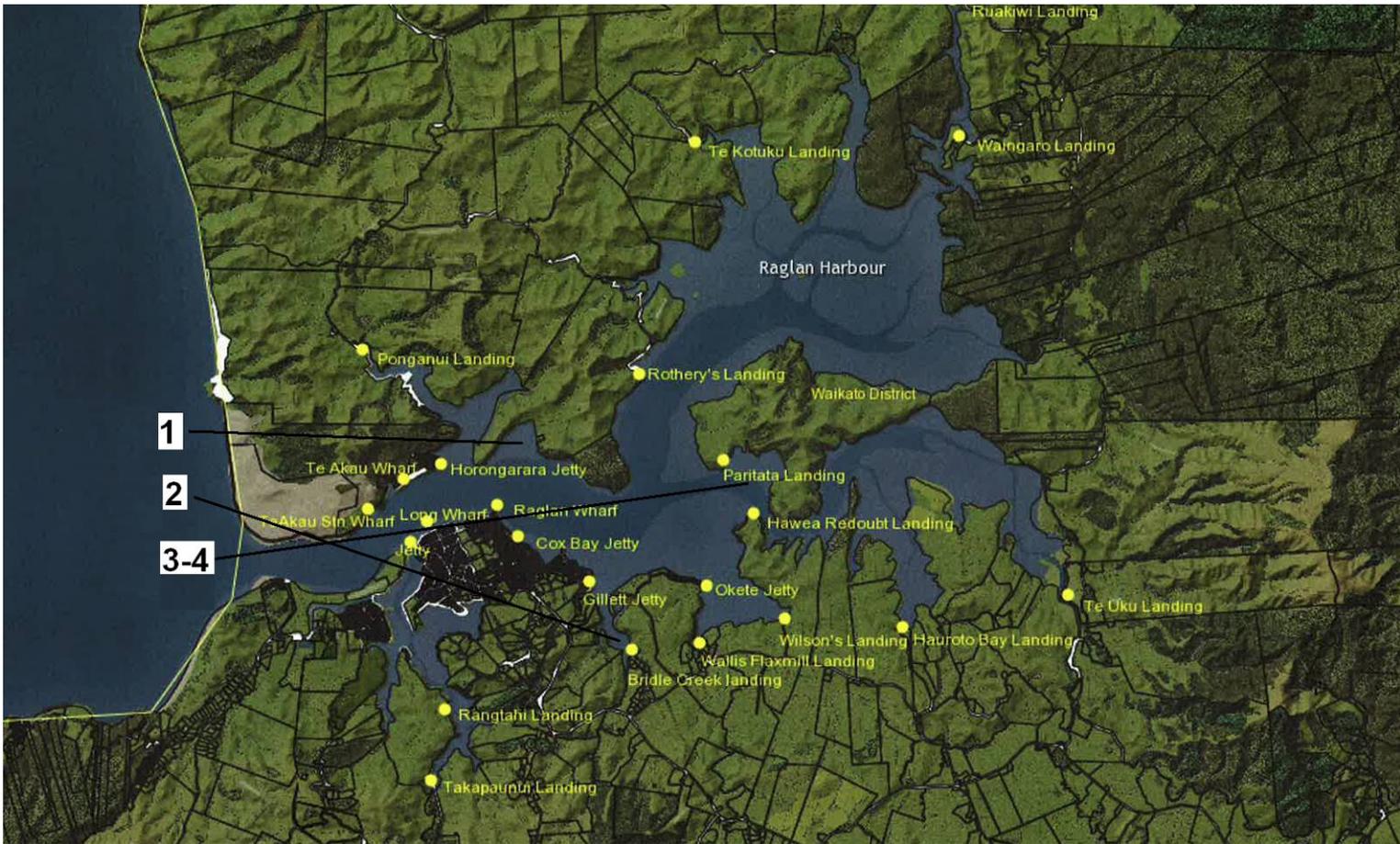


Figure 6: Map of Marine Farming Applications

2.4.6 Applications for marine farming

Marine farming operations had the potential for undermining the customary fisheries of Maori groups around Whaingaroa. The Ministry of Agriculture and Fisheries was in charge of regulating marine farming and the Ministry of Transport's Marine Division was also often involved in the erection of structures on Crown tidal land. While this is in no way a complete list of marine farming applications located in and around Whaingaroa Harbour from the 1970s onwards, what follows are five examples of applications during the 1980s and 1990s. The last application involving NIWA was perhaps the most successful in terms of Maori engagement as none of the first three applications shows evidence of consultation with Maori in any shape or form. The support of local authorities—the Raglan County Council in the case of the first three applications —was and is very important for obtaining a successful application.

In May 1982 RB and EJ Gerring (1) applied for a marine farming permit to grow and harvest Pacific oysters from Patikirau Bay in Raglan Harbour. The archives did not reveal any opposition expressed from tangata whenua but there was substantial opposition from the RCC. The Council felt that the area that was proposed for the farm was used extensively by recreational fishermen and the application was rejected.¹⁶⁶ In 1984 KR Witchell (2) applied for a marine farming permit to harvest oysters at Bridal Creek Mouth in Raglan Harbour. His application was opposed by a diverse group of tangata whenua such as the Tainui Maori Trust Board, Tainui Awhiro and the Gillett whanau as well as dozens of Pakeha residents of Raglan. The nature of the objections from the Pakeha residents largely centred on the potential risks to public access to the area where Witchell would be farming oysters, the ecological effects of marine farming on other marine life as well as birds, and the detrimental effect the farming would have on the value of the scenery at Bridal Creek.¹⁶⁷ The Gillett family opposed the application for a number of different reasons:

1. Obstruction for fishing, water-skiing, and accessway to mussels.
2. Destruction of mussel, cockles and periwinkle beds.
3. Destruction of our fishing spots, such as flounder spearing and snapper fishing.
4. Will be an eye sore for our harbour, with oyster shells and fences scattered around the harbour.
5. Dead shells being hazardous to netting and any one venturing bare footed.¹⁶⁸

The Tainui Maori Trust Board's objections on behalf of the 'Whaingaroa Maori Committee, the Tainui Awhiro hapu at Whaingaroa, and the Waikato tribes' were wide-ranging and extended to over five pages. In summary the Board's objections were based on two grounds: at a fundamental level the Board felt that the Minister of Fisheries had 'no jurisdiction to grant marine farming applications in Whaingaroa Harbour' because it would

¹⁶⁶ Ministry of Transport File 54/44/670 Vol 1, Waikato Regional Council (supporting papers #49)

¹⁶⁷ The Clarks, TS Allis, The Parrys and others to the Ministry for Agriculture and Fisheries, August and September 1984. Ministry of Transport File 54/44/816 Vol 1, Waikato Regional Council (supporting papers #50)

¹⁶⁸ GM Gillett to the Ministry for Agriculture and Fisheries, undated. Ministry of Transport File 54/44/816 Vol 1, Waikato Regional Council (supporting papers #51)

breach article two of the Treaty of Waitangi. Alternatively the Board objected to Witchell's application in terms of Section 7 of the Marine Farming Act 1971 that it would: 'interfere unduly with an existing right of navigation; interfere unduly with an existing usage for recreational purposes of the foreshore and sea; adversely affect unduly the use by the proprietors thereof of any land adjoining, or in the vicinity of the area; be contrary to the public interest.'¹⁶⁹ Despite the opposition of this diverse group of Raglan residents the Ministry of Transport and Ministry of Agriculture and Fisheries with the support of the RCC approved the application. The legal advice provided within the Ministry of Transport to the Minister was that, although the recommendations of the Waitangi Tribunal in general would be considered, the Minister of Transport was only meant to give consideration to Harbours Act matters.¹⁷⁰ Ultimately the Ministry of Transport decided following an inspection that:

1. The proposed marine farm is in an area where the only piscatorial activity is floundering, however there are other areas in the harbour where this can be carried out.
2. We are not aware of any shell fish being in the area.
3. To the best of our knowledge there are no boat launching ramps in the area therefore there would be no great effect on boating or other recreational pursuits.¹⁷¹

The Ministry of Transport commented that the objections 'in relation to the rights of the Maori people over the Raglan Harbour' did not affect the Ministry of Transport's 'consideration of the proposal.' It continued: 'your colleague, the Minister of Agriculture and Fisheries has the decision whether to issue a licence or not, taking into consideration objections of this nature.'¹⁷² While the 1982 application of Gerring was denied, perhaps due at least in part to the opposition of the RCC, when the RCC approved of Witchell's

¹⁶⁹ Tainui Maori Trust Board to the Ministry for Agriculture and Fisheries, 21 September 1984. Ministry of Transport File 54/44/816 Vol 1, Waikato Regional Council (supporting papers #52)

¹⁷⁰ 'Raglan Harbour Marine Farm,' 12 February 1985. Ministry of Transport File 54/44/816 Vol 1, Waikato Regional Council (supporting papers #53)

¹⁷¹ 'Marine Farm Application: KRD Witchell: Raglan Harbour,' 9 September 1985. Ministry of Transport File 54/44/816 Vol 1, Waikato Regional Council (supporting papers #54)

¹⁷² Secretary of Transport, 'Marine Farm Act 1971 – KRD Witchell, Raglan Harbour,' May 1985. Ministry of Transport File 54/44/816 Vol 1, Waikato Regional Council (supporting papers #55)

application it was correspondingly provided. This suggests that RCC approval or otherwise may have been a decisive factor for these particular applications.

In January 1989 Dean Te Puke applied for a marine farming permit to harvest oysters from Paritata Bay in Raglan Harbour. (3) The Tainui Maori Trust Board opposed the application as they opposed all marine harvesting in the Harbour. Eventually the application was withdrawn.¹⁷³

Following approval of Witchell's marine farming application in the mid-1980s, he attempted to extend his activity and applied for resource consent in August 1993 to occupy up to four hectares in Whaingaroa Harbour near Paritata Bay for a Pacific Oyster farm. (4) Tainui Awhiro had opposed Witchell's application previously and also opposed this application because of a lack of consultation and the adverse effects it would have on Tainui's right to collect mahinga kai. The WRC granted the permit but Tainui appealed their decision to the Planning Tribunal. Tainui repeated their opposition to Witchell's resource consent at the Planning Tribunal inquiry. They pointed out to the Tribunal that the Pacific Oyster had infested Whaingaroa Harbour and was threatening the indigenous species in the harbour. One of the appellants, Mana Forbes, compared approving a Pacific Oyster farm to establishing a protected gorse plantation in the middle of an area of native bush. The Planning Tribunal found that in relation to sections 6, 7 and 8 of the Resource Management Act the resource consent would breach each of those sections and upheld Tainui's appeal.¹⁷⁴

In 1997 the National Institute of Water and Atmospheric Research (NIWA) collaborated with the coastal marae surrounding the harbour (represented by Tainui Awhiro te Po, Ngunguru te Ao Management Committee) to develop an iwi-driven demonstration

¹⁷³ Shaun Gurden to DoC Regional Manager, 26 January 1989; D Raymond, filenote, 19 May 1989: Ministry of Transport File MRF 009, Waikato Regional Council (supporting papers #56)

¹⁷⁴ Wai 898, #A99, pp 185-189; Wai 898, #M31(a), pp 71-75; Planning Tribunal, 'Decision No. W 17/95,' 6 March 1995 (supporting papers #57)

shellfish enhancement and restoration project in Whaingaroa.¹⁷⁵ The *Waikato Times* reported that Eva Rickard supported NIWA in their drive to help preserve the harbour's shellfish because people had exploited and depleted them. '[NIWA] had already been talking with marae in their area and were planning further stages of the project, which involved taking adult cockles from the harbour and spawning them to produce larger numbers.'¹⁷⁶

The Crown's management of customary fisheries in Whaingaroa harbour since the 1970s has at times been receptive to Maori concerns—provisionally there is scope for Maori management of customary fisheries through marae-appointed delegates. In practice, Maori concerns over the lack of regulation of non-Maori non-commercial fisheries were not heeded by the Ministry of Fisheries. Marine farming licences could also be granted against the opposition of Maori as was noted in the two Witchell marine farming applications in the 1980s and 1990s. While the Planning Tribunal acknowledged Maori concerns in the second Witchell application in the mid-1990s, the Waikato District Council and the Ministry of Fisheries had ignored Maori concerns.

2.5 Management of wahi tapu

2.5.1 The Historic Places Trust, local government and wahi tapu

The Historic Places Trust was established in 1954 to 'promote the identification, protection, preservation and conservation of the historical and cultural heritage of New Zealand.' In 1993 its powers and functions were refined to incorporate the protection and registration of wahi tapu and assisting Maori in the preservation and management of heritage resources. This is accomplished through a register of heritage sites such as historic buildings,

¹⁷⁵ Stephanie Turner, 'Application for a resource consent (coastal permit to occupy the coastal marine area),' July 1997. Raglan Harbour – General Vol 2 1995-1999, WDC Ngaruawahia Archives; 'Section Two: The Project.' Waikato Regional Council File 22 03 35 Vol 8 (supporting papers #58)

¹⁷⁶ 'Project to spawn the cockles,' *Waikato Times*, 18 July 1997. Waikato Regional Council File 22 03 35 Vol 6 (supporting papers #59)

places and wahi tapu.¹⁷⁷ While the Historic Places Trust is required to keep a list of historic sites, territorial authorities such as the Waikato District Council are responsible for protecting the various sites and items. Section 74.2(b) of the Resource Management Act requires territorial authorities to take account of relevant entries in the historical register when preparing or modifying their district plans. The Waikato District Council has addressed this requirement in their 2012 district plan, which spells out their commitment to the preservation of heritage and archaeological sites as well as the rules around permitted and non-permitted activities on such sites. Policy 12.2.7 states that ‘archaeological sites and areas, sites of significance to Maori (including waahi tapu sites and waahi tapu areas), and places of historical significance should be protected from adverse effects of development or activities on those sites.’¹⁷⁸

Certain heritage sites are identified and afforded some protection by rules in the plan. The heritage sites are listed in Appendix C. Many are buildings from the European era. Sites around the edge of Whaingaroa Harbour are predominantly the landing places used by European settlers before travel by road became ubiquitous. Excluding buildings in the Raglan urban area, the identified sites are:

Site No.	Site
101C	Te Akau Station manager’s house, Te Akau Wharf Road
101D	Patikirau Bay, monument (to Tuaiwa Ngatipare)
101E	Bridal Creek Landing, Okete Bay
101F	Okete Landing, Okete Bay
101G	Wilson’s Landing, Okete Bay
101H	Waingaro Landing
101I	Peart’s Landing, The Narrows
101J	Paritata Landing, Paritata Bay
101K	Hauroto Bay Landing
153A	Wiremu Te Awa Taia monument, Te Kopua
163D	World War II pillboxes, Te Kopua

¹⁷⁷ *Historic Places Act 1954; Historic Places Act 1993*

¹⁷⁸ Waikato District Council Plan 2012, 12.2-12.3, <http://www.waikatodistrict.govt.nz/district-plan.aspx>, accessed on 13 May 2013

This list of Whaingaroa Harbour heritage sites is heavily biased towards European heritage. Interestingly, the District Plan also provides an example of what a Maori-oriented list of heritage sites could look like, as it includes a list of sites of cultural significance along the Waikato River that is derived from the Waikato-Tainui Deed of Settlement (Part 8 Subpart A). While the sites have no relevance to Whaingaroa Harbour, they are listed below as a demonstration of what types of site around the harbour could have been included in the District Plan¹⁷⁹:

Description	Significance
Hukanui-Muri Lands	Associated with Hukanui-a-Muri kainga
Kirihoa Island	Old papakainga area
Lake Kopuera and Lake Waikare	Historical food baskets for Waikato hapuu; surrounding land and margins contain sites of papakainga, nohoanga kai, paa tuna and urupa; it is highly likely that the bones of defenders who fled from Rangiriri Pa are still in the lakes
Lake Waahi	Supported the wellbeing of surrounding marae during poukai and significant events
Maurea Islands	Location of Maurea Marae
Horahora Marae	Papakainga of Horahora Marae
Paetai	Cultivation, papakainga and tauranga waka
Takinga Wairua	Papakainga
Tarakokomako Islands	Home to Tarakokomako taniwha
Te Onetea Stream	Navigable stream for waka between Waikato River and Lake Waikare; adjacent papakainga and cultivation areas
Te Takapu o Waikato Island	Location of war gongs (pahu) to warn of approaching taua (war parties)
Waahi	Tauranga waka associated with Waahi Pa

2.5.2 TV3 Antennas

In 1996 TV3 was interested in erecting a TV mast at Raglan to improve the channel's broadcast signal to Raglan viewers. TV3 was only interested in erecting the mast at one site, Horea, which is a place of significant cultural importance to Tainui Awhiro as well as the descendants of Wetini Mahikai. The tupuna of Tainui Awhiro such as Maru Te Hiakina and Punuiatekore lived and were buried at Horea. In her brief of evidence Verna Tuteao recounts

¹⁷⁹ Waikato District Council, *Waikato district plan*, operative April 2013, pages C.15-C.17

how her Uncle Wetini Mahikai Tuteao ‘was blinded as an adult, but Horea remained in his sights wherever he went.’ ‘Uncle Boot [Tuteao] spent his final years in the Raglan Home (Hospital), and without exception, spoke of Horea to our children during each visit. It was easy to forget that he was blind, as one by one, he took their hands, turned their faces to Horea, and encouraged them to build upon the thousand acres.’¹⁸⁰ TV3 applied to the Waikato District Council to erect two poles 15 metres high with supporting antennas that would be connected to the mains supply by an underground trench. Despite Tainui’s opposition, the WDC granted TV3 consent to build at Horea. Tainui Awhiro appealed their decision to the Planning Tribunal.¹⁸¹

TV3 amended their proposal by seeking only one pole with supporting infrastructure but the Planning Tribunal found in favour of Tainui. Angeline Greensill commented on the importance of the Horea site to her family and people. ‘When I see them, I know we’ve got an obligation to protect their resting places and to protect their history and to keep those places safe from development and overseas companies. It would have been a reminder that in our own land, people think more of television reception rather than the values of our rights as tangata whenua.’¹⁸² While the WDC did not deem the matter important enough to protect the wahi tapu at Horea, the Planning Tribunal did afford some protection to Tainui Awhiro’s wahi tapu. Although the Crown through the WDC did not provide protection for the wahi tapu at Horea the judiciary did.

As was stated in Chapter 1 when discussing the Tainui connections to Whaingaroa Harbour, Tainui Awhiro have claimed that the remains of Tainui tupuna have been repeatedly desecrated and ransacked by trainee archaeologists, farmers and others. As a result Tainui

¹⁸⁰ Wai 898, #M17, p 6

¹⁸¹ Wai 898, #A99, pp 183-185

¹⁸² Wai 898, #M31(a), pp 63-7; ‘Mixed reception for TV mast ruling,’ *Waikato Times*, 3 September 1996, Waikato Regional Council File 60 66 83A Vol 3 (supporting papers #60)

urupa are not identified in maps in the “Tainui Oral and Traditional History Report” and certainly not in the Historic Places Trust’s register.¹⁸³ A major wahi tapu, the traditional resting place of the taniwha Te Atai o Rongo, was well known to the Raglan County Council and its successors, the Waikato District Council and Waikato Regional Council, but it was not afforded any protection and was actively desecrated for many decades. It is one of the major focuses of the section on the Raglan wastewater saga that follows below.

2.6 Erosion control at Te Kopua

In November 1983 Eva Rickard and other members of the Tainui Awhiro Trust met with Waikato Valley Authority representatives on site to discuss the erosion problems occurring at the Te Kopua block. The Chief Executive of the Authority wrote a lengthy reply to Rickard and the Trust to explain the changes that were occurring at the harbour foreshore. The Chief Executive wrote that the first problem was local erosion due to the rocks that had been placed on the foreshore with the consent of the Raglan Harbour Board in years previous, but the much larger second problem was natural erosion occurring. The Chief Executive noted that the interference with the natural dune by the construction of airstrips and golf fairways had not helped but a ‘totally man-made cause’ was unlikely. He recommended a natural defence against the erosion problem—a good dune system in which grasses, lupins and any other plant that would grow around the dune and trap sand from sea swells and windblown sand, and which would ultimately increase the width of the dunes in both directions. The Chief Executive also noted that a comprehensive breakwater/groyne system across the entire 1.8 kilometres of the dune was an alternative possibility but it would likely have no more success than the dumped rocks.¹⁸⁴

¹⁸³ Wai 898, #A99, pp 72-74

¹⁸⁴ J Hunter Young to Eva Rickard, 21 November 1983. Raglan County Council Series 34 File R2/20 Vol 1, WDC Ngaruawahia Archives (supporting papers #61)

In April 1984 the Tainui Awhiro Trust, associated with Tainui Awhiro in Whaingaroa, applied to the Raglan Harbour Board for financial help for an erosion control scheme. The Trust wished to place a manuka system along the harbour frontage in order to stop further erosion of the sand dunes. In the 1970s the Harbour Board consented to placing solid rock on a portion of the harbour frontage to stop erosion, but the erosion had continued unabated. The Trust proposed to remove the rocks, place manuka groynes and establish a planting program. They claimed that in the late 1950s Raglan residents Eric Petchell and Tex Rickard had used the manuka groyne system to successfully halt erosion threatening another area.¹⁸⁵ Their application was rejected. The Raglan Harbour Board was prepared to approve the removal of the rocks and the planting of grasses and lupins but the Board did not approve of the planting of manuka groynes.¹⁸⁶

In the intervening period between the Trust's application and the Board's response, a large number of tree stumps were dumped adjacent to the rocks with the authority of the Tainui Awhiro Trust.¹⁸⁷ While this author was not able to find the application or the reasons it was rejected, Rickard's response was located in the Waikato District Council's archives.

I am one of the Trustees for the land and negotiator for our Work Development programmes for the future use of the land for the benefit of the owners and create employment for our young people. I am disappointed at the decision of your Board not to approve our scheme but I am not surprised. However the Trust cannot accept the non-approval of the Board to our scheme, unless your Board gives us valid reason why our erosion control plan cannot go ahead. The approval of your Board that our Trust can remove the rocks comes as a surprise. In the first instance it was the Raglan County Council that dumped the rocks and car bodies on the beach in the first place, and if I am correct, Council members are also Harbour Board members and it is not the responsibility of the Trust to remove whatever materials was

¹⁸⁵ M Te Kanawa to Raglan Harbour Board, 11 April 1984. Raglan County Council Series 34 File R2/20 Vol 1, WDC Ngaruawahia Archives (supporting papers #62)

¹⁸⁶ RG Brownlee to M Te Kanawa, 23 May 1984. Raglan County Council Series 34 File R2/20 Vol 1, WDC Ngaruawahia Archives (supporting papers #63)

¹⁸⁷ RA Firth to District Commissioner of Works, 23 August 1984. Raglan County Council Series 34 File R2/20 Vol 1, WDC Ngaruawahia Archives (supporting papers #64)

dumped there while the Raglan Golf Club was in occupation of our land. Before I continue there need to be some answers which may clear up some grey areas which may explain why the Board took the stand it did. 1. On what basis was the dune protection scheme disallowed. 2. Will the Harbour Board take full responsibility for further erosion occurring to our land. 3. How does the Board see our position in keeping trail Bikes, horses and jeeps out of the eroding area without the Tree Trunks which is only a temporary measure until grasses etc., are established. (We could fence off the area and the Public will have to walk in the water at High tide to get around to the point) 4. Did the Domain Board and the Raglan Golf Club make written applications to the Board to dump tyres, Motor car bodies, trees and rocks on the beach. 5. Are tree trunks more of an eyesore than protruding rotting iron bars on the beach.

It is a pity the Board did not meet with the Trust on the site. The Waikato Valley Authority at least had the courtesy to send a representative to meet with us and I find the communication gap between the Harbour Board and members of the Maori Community could widen and be another unpleasant situation in a town already with its fair share of adverse publicity, and the Trust does not intend to go into a long drawn out dialogue on this issue. We have work to do, we have a responsibility to our people to use our tupuna land for the benefit of all our people, and in spite of obstacles we intend to succeed, in re-establishing our people on their turangawaewae and protecting the land from the sea. In conclusion may I suggest that you call the members of the Board as we do not accept their decision without grounds and meet us on the site and perhaps invite those other Authorities and the Minister to be present.¹⁸⁸

Rickard's response reveals some of the major issues that existed between the Maori community and members of the Raglan Harbour Board. Presumably the conflict over the return of land at Te Kopua during the late 1970s and early 1980s had still been festering among the Raglan Harbour Board members (which was essentially the Raglan County Council since the Council had been given the powers of a Harbour Board back in 1894).¹⁸⁹ The 'communication gap' referred to by Rickard was evidence of the fractured relationship that still existed between tangata whenua and the RCC.

Rickard's letter had clearly made an impact as Board representatives met members of the Trust at the site of the erosion problem on 6 August 1984. The Raglan Harbour Board

¹⁸⁸ Tuaiwa Eva Rickard to Raglan Harbour Secretary, 5 June 1984. Raglan County Council Series 34 File R2/20/2 Vol 1, WDC Ngaruawahia Archives (supporting papers #65)

¹⁸⁹ Wai 898, #A63, pp 653-841; Wai 898, #A99, pp 115-123

Secretary replied to Rickard on 17 August 1984 that the Board had resolved that the Harbour Engineer be authorised to engage the services of an engineer at the Ministry of Works and Development to carry out a study of the foreshore. The study would be an overall report on the foreshore and not just the area of immediate concern to the Tainui Awhiro Trust.¹⁹⁰

On 23 August 1984 the Raglan County Council Engineer wrote to the District Commissioner of Works at the Ministry of Works & Development requesting suitable personnel from the Ministry to be employed on the Raglan Harbour Board's behalf to prepare a proposal to address the erosion problem at Te Kopua. The County Engineer claimed that in May 1984 the Raglan Harbour Board had advised the Trust that it would approve the removal of the rocks to an area well clear of the foredune and the planting of grasses and lupins in the active dune area to stop the erosion. This was contrary to the Board's response to Rickard in June 1984 that the Trust's application had been rejected. It is unclear what had caused the Board to change its decision.¹⁹¹

Nothing further was done about the erosion in the rest of 1984 and in November 1985 a site meeting for the Ministry of Works personnel was finally arranged for January 1986.¹⁹² An official from the Waikato Valley Authority prepared a report for the Tainui Awhiro Trust which the author has been unable to locate. Nonetheless it is clear from correspondence between the Board and the Ministry that the Ministry of Works Engineer did not give approval to the Trust to undertake localised groyne protection works.¹⁹³ The Ministry of Works and Development visited the site in January 1986 and confirmed that man-made erosion had developed from the rocks placed at the foreshore (by the Raglan Golf Club) as

¹⁹⁰ RG Brownlee to Rickard, 17 August 1984. Raglan County Council Series 34 File R2/20/2 Vol 1, WDC Ngaruawahia Archives (supporting papers #66)

¹⁹¹ RA Firth to District Commissioner of Works, 23 August 1984. Raglan County Council Series 34 File R2/20 Vol 1, WDC Ngaruawahia Archives (supporting papers #67)

¹⁹² RA Firth memorandum, 'Raglan Harbour Erosion Kopua Domain,' 21 November 1985. Raglan County Council Series 34 File R2/20 Vol 1, WDC Ngaruawahia Archives (supporting papers #68)

¹⁹³ RA Firth to Director of Water and Soil Division, 25 November 1985. Raglan County Council Series 34 File R2/20 Vol 1, WDC Ngaruawahia Archives (supporting papers #69)

well as the recently placed tree stumps (by the Trust), but that natural erosion in the area was a far greater threat. The erosion rate at Te Kopua had been anywhere between 0.5 to 0.9 metres per year from the 1940s to the 1980s.¹⁹⁴

Matters moved very slowly in relation to the issue but finally in November 1987 the Raglan County Council agreed to remove the large rocks that had been placed in front of the beach by the Raglan Golf Club. It is unclear exactly what the Ministry of Works and Development's study of the foreshore had revealed because the report is unavailable but one of Ministry of Works Engineer's findings was that the rocks were 'the main cause of the beach erosion.' The Raglan County Council Engineer asked for the Tainui Awhiro Trust's cooperation in removing the rocks. 'I am sure you will agree that the sooner the rocks are removed, the quicker the beach will begin to recover. It is noted that the trust planned to carry out this work in 1984 and as the Council is now to carry out the work, your co-operation is requested...Your early reply giving consent to enter the property to remove the rock groyne would be appreciated to allow works to proceed.'¹⁹⁵ It is unclear how quickly the rocks were removed and whether there was any effect on the rate of erosion.

The case-study on erosion at Te Kopua illustrates the active role local Maori were taking in combating environmental damage and their frustration in dealing with the Raglan County Council. The Waikato Valley Authority seemed to have a better on-going relationship with the Tainui Awhiro Trust, in contrast to the relationship between Tainui Awhiro and the Raglan County Council.

¹⁹⁴ JG Gibb to Raglan County Council CEO, 17 January 1986. Raglan County Council Series 34 File R2/20 Vol 1, WDC Ngaruawahia Archives (supporting papers #70)

¹⁹⁵ RA Firth to Tainui Awhiro Trust, 12 November 1987. Raglan County Council Series 34 File R2/20/2 Vol 1, WDC Ngaruawahia Archives (supporting papers #71)

Chapter 3: Raglan Wastewater Treatment Plant

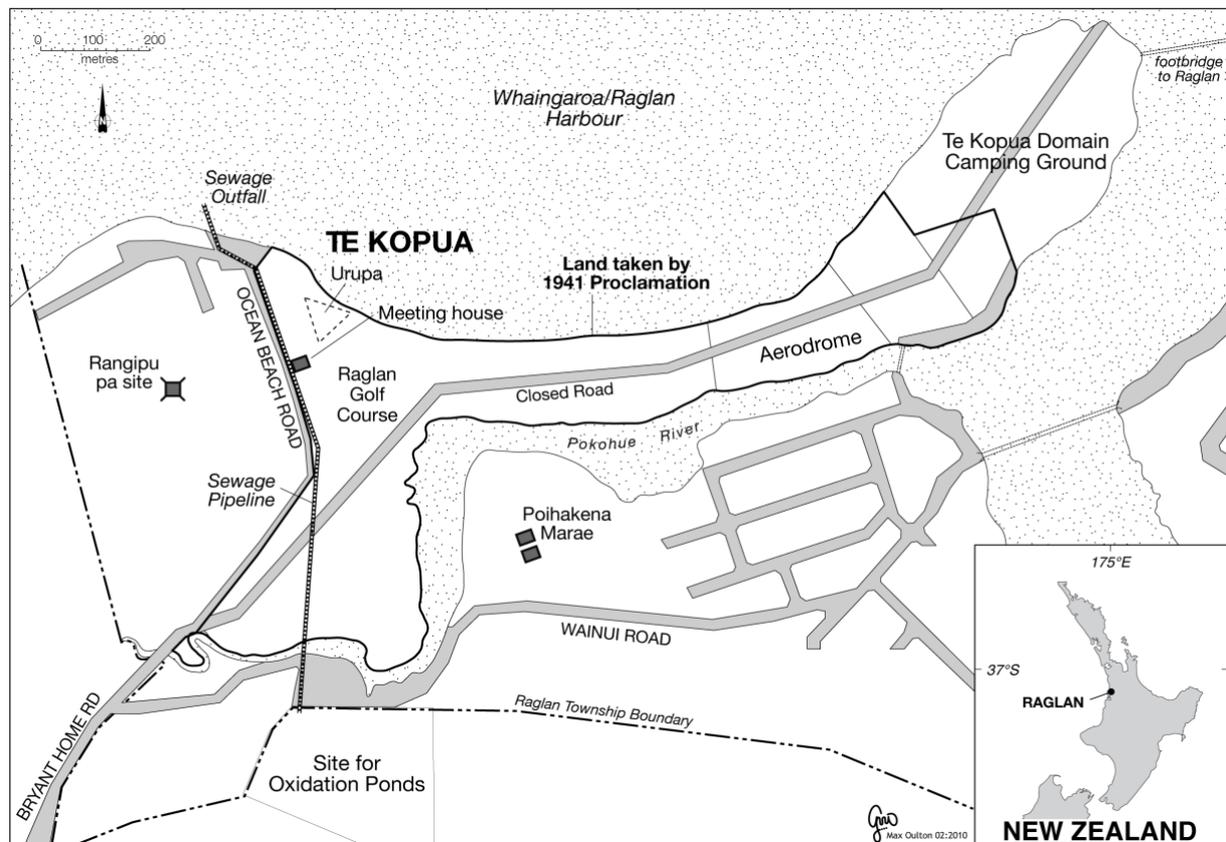


Figure 7: Map of Raglan and wastewater system

This chapter examines the Raglan County Council’s implementation of a new sewage system for Raglan during the 1970s and the significant criticism it attracted from Maori groups in the area. It discusses how sewage, often untreated, was discharged directly into the Harbour mouth near Poihakena Marae and oxidation ponds were built on Maori land at Te Kopua. An oxidation pond was built directly on a wahi tapu site—the traditional lair of the taniwha, Te Atai o Rongo. As will be shown below, the untreated sewage had a major impact on the fisheries resources in the Harbour and affected the ability of Maori groups around Whaingaroa to practice manaakitanga for visiting Maori groups and importantly for the annual koroneihana or coronation celebrations for the Kingitanga.

3.1 The development of the first sewage system, c.1970s

Concerns with the Raglan Township Sewage Scheme by tangata whenua arose in the early 1970s. The first sewage treatment for Raglan township consisted of individual septic tanks with associated field tile soakage. Due to poor soakage in some areas there was potential for health problems as a result of this disposal method. In 1970 the Raglan County Council (RCC) applied to the National Water and Soil Conservation Authority for the 'right to discharge up to 200,000 gallons per day of treated domestic waste into the channel at the entrance to Raglan Harbour.'¹⁹⁶ The Water Allocation Council memorandum noted that in addition the RCC also proposed to 'construct sewage treatment facilities consisting of a two stage oxidation pond.' The Council believed that the proposed system was the 'best available.'

Both District office of the Ministry of Works and the Medical Officer of Health agree that the site for the ponds and the point of discharge are the best available. Discharging the effluent only on the ebb tide and/or storing the effluent over the height of the holiday period have been proposed as additional safeguards for water users. The Medical Officer of Health thinks the former is unnecessary but favours the latter. A 30 day detention period has been selected as adequate for treatment.¹⁹⁷

In a section entitled 'Staff Comment' the memorandum stated that:

[W]ith the two stage oxidation pond and 30 day detention time the BOD₅¹⁹⁸ and suspended solids in the effluent is not expected to reduce the quality of the receiving waters below that required for its use. Similarly coliform bacteria concentration in the receiving waters is expected to be well within those required for the uses made of the water. Additional provisions such as

¹⁹⁶ The Raglan County Engineer's calculations for the rate at which the effluent would be discharged and the manner it would be stored and treated in the oxidation ponds were found in the archive and can be consulted in the document bank: Raglan County Engineer, 'Calculations on tidal ebb and flow at Raglan Harbour,' January 1970. AATE W3391 889 Box 39 75/11/2/2 Archives NZ Wellington (supporting papers #72)

¹⁹⁷ Director of Water & Soil Conservation, 'Application for right to discharge domestic wastes – Raglan County Council,' 27 January 1971. IAW1917 4, 66/70/2 Part 1, Archives NZ Wellington (supporting papers #73)

¹⁹⁸ 'Biochemical oxygen demand or B.O.D is the amount of dissolved oxygen needed by aerobic biological organisms in a body of water to break down organic material present in a given water sample at certain temperature over a specific time period. The term also refers to a chemical procedure for determining this amount. This is not a precise quantitative test, although it is widely used as an indication of the organic quality of water. The BOD value is most commonly expressed in milligrams of oxygen consumed per litre of sample during 5 days of incubation at 20 °C and is often used as a robust surrogate of the degree of organic pollution of water.' <http://en.wikipedia.org/wiki/Biochemical_oxygen_demand>, accessed 20 September 2013.

discharging on the ebb tide only and storing during the holiday period are not therefore, considered necessary.’

With regards to water use the memorandum stated that

‘Raglan Harbour is used extensively during the summer months for fishing, boating and swimming. More importantly, there are extensive shellfish beds in Kaitoke Bay adjacent to the Raglan township, from which shellfish are regularly taken by resident and visitor alike. To safeguard these beds any discharge from the proposed oxidation ponds must be of such quality as to maintain SA standards in the shellfish waters.’

The application had been advertised once in the *New Zealand Herald* in July 1970 and there were no objections received.¹⁹⁹

In January 1971 the RCC was granted a permit by the National Water and Soil Conservation Authority through the Water Allocation Council to discharge treated sewage to Raglan Harbour for a ten year period. The Water Allocation Council resolved:

That the Raglan County Council be granted the right to discharge up to 200,000 gallons per day of treated sewage effluent from a two stage, series oxidation pond, the area of primary pond being not less than 8 acres and the area of the secondary pond being not less than 6 acres with the depths of both ponds being not less than 3ft., into Raglan Harbour...for a period of 10 years subject to: (i) the standard conditions (a) to (n) of the Water Allocation Council for the issue of water rights, (ii) daily discharge at BOD5 not to exceed 300 lbs., (iii) the ponds being continuously operated and adequately maintained to maintain in the receiving waters a satisfactory quality standard.²⁰⁰

In practice the septic sewage system in Raglan was constantly overflowing and was described as ‘a shambles’ by the Raglan Health Inspector in 1972. A petition was organized by two of the town’s residents, IJ Ellingford and R Burton, and signed by 75 other residents including Eva Rickard and R. Kereopa to speed up the Raglan County Council’s planned sewage scheme. The *Waikato Times* reported that:

¹⁹⁹ Director of Water & Soil Conservation, ‘Application for right to discharge domestic wastes – Raglan County Council,’ undated. IAW1917 4, 66/70/2 Part 1, Archives NZ Wellington (supporting papers #74)

²⁰⁰ Water Allocation Council, ‘Minutes of meeting held in Wellington,’ 27 January 1971; Water Right Schedule/Conditions. AATE W3407 Box 72, Archives NZ Wellington (supporting papers #75)

They claim the inadequate system at present operating has spread illness through the town via infected insects biting humans. Residents and holidaymakers have complained of the 'unbearable' smell which builds up at low tide. A public convenience above the pipe has not been emptied for so long that raw sewage has overflowed through an airvent on to the footpath beside the convenience. Mr Ellingford asked the council's sanitary department to clean up the mess...but it had not been done. The soil in the central town area, where most of the shops are, is not capable of assimilating the sewage and it has banked up to a point where it is, in some cases, flowing back up the pipes. A broken sewerage pipe opens out on to the beach 10-20 feet above high water level, and 30-40 feet above low water level, letting raw sewerage spread on to beaches where children play. Mr Ellingford showed the Times several such pipes. A Raglan doctor has signed the petition and given his support to the project. Raglan County engineer Mr R. B. Murray said plans for a new sewerage system are in the final stages and a few submissions have yet to be made to the Ministry of Works.²⁰¹

The *New Zealand Herald* reported that the local Raglan doctor, TN Ellison, stated that 'for six years he had been in the town the council had been putting off having a sewerage scheme.'²⁰² The *Herald* also reported that the Raglan County Health Inspector had served notices on the Harbour View Hotel and the Surfers' Paradise restaurant to extend their drains below the low water mark by at least 200 feet. The two businesses were discharging waste water above the high water mark at the Opoturu inlet outfall. The Health Inspector commented that it was 'a definite health hazard...as the outfall is on the public swimming and boating beach.' The new sewage system was set to cost \$400,000 of which the Government would only subsidise a third.²⁰³

²⁰¹ 'Sewerage in a shambles,' *Waikato Times*, 12 January 1972. YCBE a801 1990 Box 102 c 21/20/1 7589 Archives NZ Auckland (supporting papers #76)

²⁰² There was also a letter to the editor regarding the poor state of fisheries in the harbour. 'Over the years the quantity and quality [of cockles] have diminished considerably; one has to work hard to collect a gallon bucketful. There is ample evidence of serious pollution.' 'Sewage Hazard at Resort,' *New Zealand Herald*, 13 January 1972; RG Young, 'Shellfish gatherers finding pollution at Raglan,' *New Zealand Herald*, 21 January 1972: YCBE a801 1990 Box 102 c 21/20/1 7589 Archives NZ Auckland (supporting papers #77)

²⁰³ Raglan harbour's problems with pollution were highlighted on a television program on Northern Television in early 1972. The Raglan County Council representative for the town of Raglan, KM Snowden, claimed that the program over-exaggerated the issue. Another resident who was one of the original sponsors of the petition which called for action on the sewerage problem said that he thought the program accurately reflected the problem in the town. 'TV film upsets Raglan residents,' *Waikato Times*, 3 February 1972; 'Swimming spots fouled by sewage,' *Waikato Times*, 21 January 1972; 'Fast Action will end Raglan Sewage Trouble,' *New Zealand Herald*, 25 January 1972; 'Raglan sewer plan will get priority,' *Waikato Times*, 25 January 1972; SR

After reading articles in the *Waikato Times* regarding the town's sewage problems the Hamilton Medical Officer of Health wrote to the Raglan County Clerk to express his concern for the sanitary situation in Raglan.

With reference to the *Waikato Times* report on 12.1.72, Dr Dawson also had phone complaints about draining conditions at Raglan and so on 11.1.72 I rang Mr Mackness and he was visiting Raglan the next day. I also understood him to say the drain in question could be from the hotel and possibly some of the shops. Apparently the drain had broken and he was going to see if it could be repaired and extend it to low tide. It is appreciated that these drains must have been installed some 30 or 40 years ago and under the Water and Soil Conservation Act 1967 would now need a 'right to discharge'. A survey of the waterfront would probably show many other illegal outfalls. The provision of a properly reticulated sewage scheme would be the only answer to this problem and it is recommended that this be given priority. In the meantime the Medical Officer of Health would appreciate a report on the present nuisance conditions and an outline of steps taken to abate same.²⁰⁴

The Raglan County Clerk replied later in January 1972 without any specific detail of the 'nuisance conditions' and any 'steps taken to abate' the problem:

Council is making every effort to complete the proposals for the sewerage scheme at Raglan and these should be submitted to the Local Authorities Loans Board shortly for its consent to the raising of a loan and to your Department in support of an application for subsidy. The plan has been completed and the Engineering Department is at present engaged on preparing the estimate and certain statements relating to the Scheme. In the meantime, the County Health Inspector is taking whatever action is possible to abate the nuisance at Raglan.²⁰⁵

Morrow, 'Threat to Raglan,' *New Zealand Herald*, 1 February 1972: YCBE a801 1990 Box 102 c 21/20/1 7589 Archives NZ Auckland (supporting papers #78)

²⁰⁴ Medical Officer of Health to Raglan County Clerk, 13 January 1972. YCBE a801 1990 Box 102 c 21/20/1 7589 Archives NZ Auckland (supporting papers #79)

²⁰⁵ Raglan County Clerk to Hamilton Medical Officer of Health, 26 January 1972. YCBE a801 1990 Box 102 c 21/20/1 7589 Archives NZ Auckland (supporting papers #80)

The Department of Health Head Office in Wellington wrote to the Hamilton Office in February 1972 asking for ‘comment upon the situation reported in the press and upon any action taken to abate any nuisance which has occurred.’²⁰⁶

The Hamilton Medical Officer of Health outlined the developments in the planned sewage scheme since 1969 in a letter to the Director-General of Health in Wellington:

A sewerage scheme for Raglan township has been under consideration for several years and in May 1969 the Medical Officer of Health and Supervising Inspector of Health met the County Engineer at Raglan to look at a proposed site for ponds in the upper harbour reaches. The site had several disadvantages so later this was checked further with the Public Health Engineer and other parts of the township were also inspected but none of the sites were considered suitable. In October 1969 the Riding Member advised of another area on the Kopua side of Raglan and after further inquiries by the Council the Engineer asked our opinion. Another visit was made with the Medical Officer of Health and Public Health Engineer in January 1970 and the site on the Kopua side was considered the best available. A copy of letter dated 8 January 1970 to the County Engineer is attached to where you note we recommend a sewerage scheme be planned, and since then the County Engineer has been carrying out surveys in connection with the proposed scheme. While some areas of Raglan may be sandy, in nearly all the higher parts of the township the soil is of a heavy clay nature with generally poor soakage with the result many sections seep into open drains and waste water eventually finds its way into the harbour. Apparently the hotel and some of the other larger buildings in the Main Street had illegal discharge pipes into the harbour for years and it was when these pipes were damaged that the fact became known. However, it is only this year that we became aware of the nuisance and the matter was taken up with the County Health Inspector. Therefore, I can only confirm that Raglan township has a drainage problem and the only answer is a sewerage scheme and when the County submit a scheme for loan approval, a report will be forwarded with our recommendation. In the meantime the County Health Inspector is having broken drains repaired and where possible the outfall extended to low water levels.²⁰⁷

The Raglan County Council Health and Building Inspector reported on the conditions of the drains to the Hamilton Medical Officer of Health:

²⁰⁶ Head Office to Hamilton, ‘Our file 32/262,’ 1 February 1972. YCBE a801 1990 Box 102 c 21/20/1 7589 Archives NZ Auckland (supporting papers #81)

²⁰⁷ Hamilton Medical Officer of Health to Director-General of Health, 2 February 1972. YCBE a801 1990 Box 102 c 21/20/1 7589 Archives NZ Auckland (supporting papers #82)

A steel pipe discharging into the main inlet receives the discharge from the Hotel, Paradise Cafe, a Hall and a flat let situated behind the hall. Notices under the Health Act (Section 29) have been served on all owners, requiring extension of the pipe to below the low water mark. Open stormwater drains which receive discharges of Septic tank effluent (mainly seepage) and sullage water are smelling because of the dry hot weather. I have requested Council to flush these drains weekly during the dry periods. All drainage problems now coming to light, are caused by non-porous soils and a building up of population in Summer months this can be six or seven times the permanent population of approximately 1,000 and is increasing annually. It is for the above reasons that this Council will shortly be forwarding to your Department in Wellington plans for the proposed sewerage scheme, it would therefore be greatly appreciated if your support be given to this scheme so as to eliminate a potential Health hazard area.²⁰⁸

In May 1972 the Raglan County Clerk replied to the Medical Officer of Health that the sewage scheme for Raglan was almost completed.²⁰⁹ Over four months later in September 1972, the Hamilton Medical Officer of Health was still awaiting a response from the County Clerk.²¹⁰

You will recall earlier this year there was considerable adverse newspaper publicity concerning the lack of adequate sewage treatment works at Raglan and a copy of a petition from Raglan residents asking that the town be sewered as soon as possible, was sent by the residents to the Director-General of Health...We are now approaching the holiday season and again Raglan Town will be visited by many thousands of holiday makers and it appears that apart from the temporary measures listed in your letter of 1 February 1972 and the fact that a scheme plan is being prepared, there is little else you will be able to tell any who continue to complain about the primitive sewerage arrangements in the town. May I suggest that the most urgent action be taken by your engineering staff to present copies of the completed scheme to the Director-General of Health for comment and at the same time, make application for any subsidy for which your Council may be eligible.²¹¹

²⁰⁸ Raglan County Council Health & Building Inspector to Hamilton Medical Officer of Health, 1 February 1972. YCBE a801 1990 Box 102 c 21/20/1 7589 Archives NZ Auckland (supporting papers #83)

²⁰⁹ Raglan County Clerk to Hamilton Medical Officer of Health, 16 May 1972. YCBE a801 1990 Box 102 c 21/20/1 7589 Archives NZ Auckland (supporting papers #84)

²¹⁰ Hamilton Medical Officer of Health to Raglan County Clerk, 26 July 1972. YCBE a801 1990 Box 102 c 21/20/1 7589 Archives NZ Auckland (supporting papers #85)

²¹¹ Hamilton Medical Officer of Health to Raglan County Clerk, 22 September 1972. YCBE a801 1990 Box 102 c 21/20/1 7589 Archives NZ Auckland (supporting papers #86)

The Raglan County Clerk replied that a scheme was being arranged by the County Engineer and its estimated cost would be \$491,000 and would ‘probably take three years to complete.’ The County Clerk commented that ‘this is the only water and sewerage scheme likely to be proceeded with in the next three years.’²¹²

In October 1972 the Department of Health received an application for a ‘subsidy towards the capital cost of providing sewage treatment and disposal facilities’ from the Raglan County Clerk. It proposed a system in which the wastewater would only be treated in oxidation ponds. The application noted that Whaingaroa harbour had not been classified under the Waters Pollution Regulations by the Pollution Advisory Council and there were subsequently no conditions on the discharge. The County was seeking a \$330,000 loan from the Local Authorities Loan Board and \$161,000 subsidy from the Department of Health.²¹³ The Hamilton Medical Officer of Health wrote a letter of support for the Raglan County Council’s proposed scheme. He noted that ‘many open stormwater drains receive septic tank effluent, resulting in offensive conditions in warm weather. Residents have complained that at low tide the tidal flats are offensive...The County Health Inspector reports generally unsatisfactory conditions, particularly at peak periods.’ There was little concern for the pollution of the harbour. ‘It is proposed to treat sewage in 2 stage oxidation ponds with disposal to the lower reaches of the harbour in an area where tidal dispersal is possible. The harbour is not classified at present but it is expected that it will be S[tandard] C[lassification]. A water right was approved by the Water Allocation Council on 27 January 1971 requiring a primary pond of 9 acres and a secondary one of 6 acres with a water depth of not less than 3 feet. This can be achieved in the area of land available.’ The Medical Officer of Health had

²¹² Raglan County Clerk to Hamilton Medical Officer of Health, 1 September 1972. YCBE a801 1990 Box 102 c 21/20/1 7589 Archives NZ Auckland (supporting papers #87)

²¹³ Raglan County Clerk, ‘An application for a subsidy towards the capital cost of providing sewage treatment and disposal facilities,’ 6 October 1972; ‘Raglan region seeks \$330,000 for sewerage,’ *Waikato Times*, 25 October 1972. YCBE a801 1990 Box 102 c 21/20/1 7589 Archives NZ Auckland (supporting papers #88)

‘no objections to this proposal’ and recommended its acceptance ‘on condition that Council has a trained operator on its staff to supervise operations.’²¹⁴

The Raglan County Council produced a scheme statement to outline its plan. This detailed the recent history of the development of a sewage scheme.

An early demand for sewerage was made in the late 1950s when natural soakage in the area immediately behind the main commercial section showed signs of overloading. No action on this was taken while the problem of a satisfactory water supply was settled, and by the middle 1960s a scheme had been completed. Public demand again arose for a sewerage scheme for the central areas of the town, and this was added to by the Domain Board who found that the increasing summer population in the camping ground overloaded the disposal facilities serving the camp. In succeeding years, the scheme was planned and added to until in 1970 at the instigation of the Town Committee, Council instructed the preparation of a proposal to serve the full area of Raglan Town. Discussions were held with officers of the Department of Health and the Ministry of Works over suitable schemes, the final result being the proposal to build an oxidation pond in a sheltered valley west of Raglan and discharge treated effluent into the lower reaches of the harbour in an area where tidal dispersion will take waste water away from the outfall.²¹⁵

The development of the scheme would first be applied to the central residential and business area, the Raglan Domain and Raglan West and then gradually to settlements in Lorenzen and Cox Bays. The flow quantities of the scheme had been calculated ‘on the basis of 50 gal/head/day for dry weather, and 200 gal/head/day for wet weather and peak flows. The B.O.D. of domestic sewage is taken as 200 p.p.m. or 0.15 lbs/capita/day. Infiltration rates of 100 gals/inch of diameter/mile/day have been allowed, and these in no case provide any significant loading.’²¹⁶

The scheme statement also had information on the treatment process and the pumping stations that were to be constructed:

²¹⁴ Hamilton Medical Officer of Health to Head Office, 8 November 1972. YCBE a801 1990 Box 102 c 21/20/1 7589 Archives NZ Auckland (supporting papers #89)

²¹⁵ ‘Raglan County Council Sewerage Scheme – Raglan County Town Scheme Statement.’ YCBE a801 1990 Box 102 c 21/20/1 7589 Archives NZ Auckland (supporting papers #90)

²¹⁶ Ibid. (supporting papers #90)

As a result of discussions with Departmental Officials, and some investigation into alternative forms of treatment based mainly on packaged plants each serving small sections of the town independently, the oxidation pond type of treatment was chosen. An area west of the town has been found to offer the most convenient site, and is capable of further development to allow for population growth. Initially, approx 15 acres can be used, being mainly peat bog and underlying clay. An initial loading of 500 persons/acre has been adopted, but it is realised that current experience is proving it possible to increase this to 600-1,000 under suitable conditions. Thus, there is considerable room for growth both in loading rates, in area available, and for multi-stage treatment should this be required...In the complete scheme, nine pumping stations using submersible type pumps are planned, each station having twin pumps controlled by float switches. Pump sizes and types can be chosen to give a high degree of interchangeability. Holding capacity of stations is designed to carry 3 hours of max. wet-weather flow, with emergency overflows into Raglan Harbour. A alarm system to warn of unduly high raw sewage levels in the holding chambers will be incorporated. Pumping stations will be completely underground except for plinth-mounted control panels on six stations and concrete masonry buildings housing control gear for the three larger units.²¹⁷

The Hamilton District Commissioner of Works wrote a letter of concern to the Hamilton Resident Engineer from the Ministry of Works regarding the proposed sewage scheme statement. The water right from the Water Allocation Council had stated that the primary and secondary ponds be not less than 8 and 6 acres respectively. The Commissioner of Works found that ‘scaling from the drawings, the primary and secondary ponds appear to be 7 acres, and 5 acres respectively so that land requirements and the cost estimate may be affected by the ponds areas specified in right.’ The Commissioner commented:

The scheme statement notes that an initial pond loading i.e. primary pond, of 500 persons/acre (751lbs BOD/acre/day) has been adopted, but under suitable conditions it is possible to increase the loading to 1000 persons/acre (150 lbs BOD/acre/day). However where the higher loading has been used for a peak holiday period, it has been considered desirable to store the effluent for say five weeks over this period to ensure that the receiving waters are safe for bathing in the event of a malfunction of the ponds under the higher loading. The right does not require such storage to be provided but it may have to be

²¹⁷ ‘Raglan County Council Sewerage Scheme – Raglan County Town Scheme Statement.’ YCBE a801 1990 Box 102 c 21/20/1 7589 Archives NZ Auckland (supporting papers #90)

considered as the holiday population increases. On the bases of an average holiday population BOD contribution of 0.09 lbs BOD/person/day and a primary pond loading of 751 lbs BOD/acre/day, an 8 acre primary pond would cater for a holiday population of about 6700 persons. Regarding the pumping stations, it would seem that rights have been obtained for the emergency overflows. Would you please confirm this with the county and check what storage is intended in the event of a power failure.²¹⁸

The previous year's problems with overflowing sewage during the holiday season persisted into 1973 as raw sewage continued to flow onto the beach. The Raglan County Clerk claimed that the Council had done as much as was possible to submit their proposed scheme to the Ministry of Works and Department of Health but they had yet to hear back from either agency. There was no comment from the RCC about the delay in submitting the scheme for approval.²¹⁹ The Department of Health in Wellington wrote to the Hamilton Medical Officer of Health asking for comments on the reports of sewage overflows in Raglan. Head Office felt that it was 'essential that the Medical Officer of Health be informed should such emergency overflows occur.'²²⁰ The Hamilton Medical Officer of Health replied that 'it is probably true that pollution did occur over the Christmas period in Raglan and it is also possible that pollution will again occur in the 1973 Christmas period as it is unlikely that the Raglan Town proposed scheme will be completed by that date.'²²¹

Individual Raglan residents wrote letters to various officials and members of Parliament. The MP for Raglan, Sir Leslie Munro, and even Prime Minister Norman Kirk received letters. In early 1973 after the holiday season a Raglan resident, Mrs. Burton, made the same complaints that had been heard in previous years about the unbearable smell of

²¹⁸ Hamilton District Commissioner of Works to Hamilton Resident Engineer, 22 November 1972. YCBE a801 1990 Box 102 c 21/20/1 7589 Archives NZ Auckland (supporting papers #91)

²¹⁹ 'Council explains sewerage delays,' *Waikato Times*, 23 January 1973; 'Holiday health hazard hits Raglan again as toilets fail to cope,' *New Zealand Herald*, 23 January 1973: YCBE a801 1990 Box 102 c 21/20/1 7589 Archives NZ Auckland (supporting papers #92)

²²⁰ Director of Public Division of Health to Hamilton Medical Officer of Health, 25 & 26 January 1973. YCBE a801 1990 Box 102 c 21/20/1 7589 Archives NZ Auckland (supporting papers #93)

²²¹ Hamilton Medical Officer of Health to Director of Public Division of Health, 25 January 1973. YCBE a801 1990 Box 102 c 21/20/1 7589 Archives NZ Auckland (supporting papers #94)

sewage and overflowing pipes to both Prime Minister Kirk and the Minister of Health.²²² Her letter to the Prime Minister was referred to the Minister for Local Government who in turn forwarded it on to the Minister of Health.²²³ The Department of Health Head Office asked the Hamilton Office to investigate Burton's complaints. The Medical Officer of Health reported on the situation in March 1973 to the Head Office:

Nothing can be done at present to improve the existing sanitary conditions, indeed any attempt to divert obvious pollution sources at this stage would be costly and unjustified in view of the Council's decision to proceed with a treatment scheme. We would recommend that the highest priority be given the local application so that the Council has no excuse and cannot blame any government department for scheme delay. Even under the best conditions it will be most unlikely if the scheme will be in operation by 1974 at the earliest. Once loan approval has been granted it is our intention to review the Council's progress at varying stages and to keep the utmost pressure on the Council to ensure the work is carried out in a minimum period.²²⁴

The RCC's own delays in submitting an application for a sewage scheme in 1972 were compounded by the Ministry of Works' delays in compiling a report on the Council's plans and the Local Authorities Loans Board's delays in considering the Council's loan application.²²⁵ In mid-March 1973 the Hamilton District Commissioner of Works approved the scheme and recommended that the subsidy be approved 'but with the condition that details of the pumping stations, oxidation ponds and harbour outfall sewer are submitted to this office for general acceptance before work is commenced.'²²⁶ The Commissioner of

²²² Mrs Burton to Prime Minister Norman Kirk, January 1973; Mrs Burton to Minister of Health, 8 March 1973: YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #95)

²²³ Minister of Local Government to Mrs Burton, 5 February 1973. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland

²²⁴ Hamilton Medical Officer of Health to Department of Health Head Office, 15 March 1973. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #96)

²²⁵ Department of Health Head Office to Hamilton Office, 9 March 1973; Department of Health Hamilton Office to Head Office, 12 March 1973: YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #97)

²²⁶ Hamilton District Commissioner of Works to Commissioner of Works, 'Raglan County Council, Raglan Town Sewerage Loan 1972 - \$330,000,' 15 March 1973. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #98)

Works recommended to the Local Authorities Loans Board that the loan be 'recommended without deferment.'²²⁷

At its 14 May 1973 meeting the Local Authorities Loans Board approved the loan to the Raglan County Council.²²⁸ The Raglan County Council subsequently made a special order to enable the Council to borrow the sum of \$330,000 to install the sewage scheme.²²⁹ Nonetheless, despite some action finally being taken by the central government and local government to accelerate the process, the County Engineer stated that there was still set to be a three year wait before the new sewage system would be operational. The delay was due to the lack of finance available and a shortage of fibrolite pipes to construct the sewage system. The Council Chairman believed it could be done in 12 months.²³⁰ The Hamilton Medical Officer of Health was 'concerned at the length of time your engineer estimates it will take to finish the scheme and heartily support the stand taken by your chairman, Mr Kellow, to get on with the job.' He continued, 'While I appreciate that there may be difficulties over the supply of materials and the raising of finance necessary for this scheme, the provision of a sewerage scheme for the town is of the utmost importance and every effort should be made to ensure that it is completed with the minimum of delay.'²³¹

As the development of the sewage system stretched on over the years, concerns about the impact of pollution on fisheries were expressed by residents. A Raglan resident wrote to the Department of Health to inquire about the location of areas in the harbour where it would

²²⁷ Commissioner of Works to Local Authorities Loans Board, 2 April 1973. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #99)

²²⁸ Local Authorities Loans Board to Raglan County Council, May 1973. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #100)

²²⁹ 'Raglan County Council Special Order Raglan Town Sewerage Loan 1973,' *Waikato Times*, 2 June 1973. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #101)

²³⁰ 'Raglan residents will breathe easily again now,' *New Zealand Herald*, 7 June 1973; 'Long wait to get sewerage,' *New Zealand Herald*, 24 July 1973; 'Sewerage plans lack cash,' *New Zealand Herald*, 28 August 1973; 'Sewerage finance mounting,' *Waikato Times*, 27 August 1974: YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #102)

²³¹ Hamilton Medical Officer of Health to Raglan County Clerk, 27 July 1973. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #103)

be safe to collect pipis ‘in view of the faecal pollution of the Raglan harbour.’ The resident asked for recent surveys of fish and shellfish coliform counts.²³² The Department of Health had no information for the resident and asked the Raglan County Council for their help. The Department believed that the ‘Council may have undertaken a survey of the polluted areas and also taken samples to assess the degree of pollution in the Harbour.’ As the Council made clear in its reply it had no information regarding the extent or effect of pollution in the Harbour.

I have to advise that we have no record of any disease or sickness arising from the consumption of shellfish from Raglan Harbour nor is there any indication of pollution of shellfish beds. As far as can be ascertained, shellfish is taken mainly from the upper reaches of the Oputoru Inlet and this is a considerable distance up a separate channel from the area where the faecal pollution may have occurred. While the pollution problem (so called) was given press publicity, it is considered that this was both minimal and seasonal as the effluent leaking would only occur in the height of the holiday season. Furthermore, these conditions have existed for years and were only highlighted in the past season because of a complaint to the Press.²³³

The Department of Health passed on this response to the Raglan resident.²³⁴

The construction and installation of the sewage scheme was ongoing from 1973. The Hamilton District Commissioner of Works, the National Commissioner of Works and the Raglan County Engineer corresponded over the logistics of the pumping stations and oxidation ponds that were set to be installed. The original oxidation ponds were meant to be 8 and 6 acres respectively but they were now set to be 5 acres each. The Commissioner felt that their limited size would not be suitable for the peak holiday period. At the same time there were also concerns that the 8 and 6 acre oxidation ponds would cause problems with

²³² Kerry Witchell to Department of Health, 26 March 1973. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #104)

²³³ Raglan County Clerk to Hamilton Medical Officer of Health, 12 April 1973. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #105)

²³⁴ Department of Health to Kerry Witchell, 26 April 1973. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #106)

under-loading the ponds in the off-peak periods. It was subsequently recommended that only 5 acre ponds be built as the threat of under-loading was allegedly more significant than over-loading.²³⁵ One of the Commissioner's concerns was the contingencies planned for overflows. He reiterated that it would be necessary to 'obtain a water right from the Regional Water Board for any such overflows.' He also recommended a suitable alarm system.²³⁶

It was proposed that two 5 acre oxidation ponds be built to avoid under-loading during off-peak periods.²³⁷ The District Commissioner of Works indicated that 'future loadings could be accommodated by intensifying treatment in the primary pond by means of mechanical aeration.' The 8 acre primary pond was to be reduced to '5 acres by means of a temporary embankment across the pond which could be removed at some future time if the full 8 acres is then found to be necessary.'²³⁸ In the end 6 acre ponds were built as it seemed the County Engineer wanted to make the ponds as large as possible.²³⁹

3.1.1 Maori opposition to the Raglan Sewage Scheme

While Eva Rickard and R Kereopa had signed the 1972 petition circulated by Raglan residents, there was also some other documented opposition to the Council's plans for the sewage scheme. An unidentified letter to the *Te Awamutu Courier* editor from 'a concerned 13 year old' criticised the Council's decision to take Maori land for the construction of oxidation ponds and a pumping station.

²³⁵ Hamilton District Commissioner of Works to Commissioner of Works, 1 November 1974; Hamilton District Commissioner of Works to Raglan County Engineer, 13 December 1974; Division of Public Health Director to Ministry of Works Hamilton, 19 December 1974: YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #107)

²³⁶ Hamilton District Commissioner of Works to Raglan County Engineer, 1 August 1974. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #108)

²³⁷ Hamilton Medical Officer of Health to Raglan County Engineer, 8 January 1975. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #109)

²³⁸ Hamilton District Commissioner of Works to Raglan County Engineer, 14 January 1975. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #110)

²³⁹ Hamilton District Commissioner of Works to Commissioner of Works, 11 March 1975. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #111)

I would like to protest against the Raglan County Council's decision to use 23 acres of land for a sewage treatment project. I think it is wrong that the Council should do this because: - part of the land used for the project will cover sacred Maori land – it will be situated near a Maori Meeting house—I'm sure that no person would want to live by a sewage treatment station – it is near a golf course which is a converted landing strip originally given by the Maori people during the Second World War and should be theirs by right – it is also on two farmers' properties and to my knowledge, they were not told at all about the project. There are times when we must respect the Maori customs and beliefs. Such a time is now.²⁴⁰

Just over a week later the public notice regarding the public works takings referred to in the above letter were published in the *Waikato Times*. The schedule of lands was listed as 9 acres that was Part Rakaunui 1C2A2 block in Block I Karioi Survey District and 15 acres that was Part Allotment 4 Parish of Karioi.²⁴¹ In the end all of Part Rakaunui 1C2A2 block was taken pursuant to the Public Works Act 1928 for 'Sanitary Works' but only approximately 12 acres instead of the original 15 acres that was Part Allotment 4 was taken.²⁴²

An organization representing Maori interests in Raglan, the Tainui Tribal Committee, wrote to the Raglan County Council objecting to the public works takings involved in the sewage scheme. The Committee's Chairman, Tex Rickard, told RCC Councillors about the taniwha, he states that 'they sniggered.'²⁴³ The Committee wrote to the MP for Western Maori, Koro Wetere, seeking his support for their objections. The *Waikato Times* reported on the opposition from the Tainui Tribal Committee in early October 1973:

Raglan Maoris will fight to retain eight acres of land earmarked by the Raglan County Council for its proposed \$330,000 sewerage scheme. The land is needed as part of a 22-acre oxidation pond system. But the Tainui Tribal Committee has written to the council objecting to this, and is seeking the support of the MP for Western Maori, Mr K.T. Wetere. The oxidation ponds

²⁴⁰ A concerned 13 year old, 'Siting of Raglan Sewage Pond,' *Te Awamutu Courier*, 12 September 1973. YCBE a801 1990 Box 102 c 21/20/1 7589. Archives NZ Auckland (supporting papers #112)

²⁴¹ 'Public Notices in the matter of the Public Works Act 1928 Raglan Town Sewerage Scheme,' *Waikato Times*, 20 September 1973: YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland; *New Zealand Gazette* 1973/1868 (supporting papers #113)

²⁴² *New Zealand Gazette* 1974/2584; Wai 898, #A63, pp 260-261

²⁴³ Wai 898, #A99, pp 134-135

are sited in Wainui Road, Raglan. The objection is based on: - Siting of the ponds 300 yards from the Maori Community Centre, and the possibility of prevailing winds carrying offensive smells into the area. – Siting of the ponds adjacent to an entirely Maori residential and community area. – Possible pollution of shellfish grounds. – Proximity to the domain of Te Atai-o-rongo, the taniwha guardian of the Tainui people. – Decrease of value on Maori property in the area. – Further loss of Maori coastal lands. – The loss of too much land by Raglan Maoris through acquisition for public use. The Tribal Committee wants a full environmental report and a confrontation with the county council and the Minister of Works, it says in a letter to Mr Wetere. ‘We feel through long years of experience that it has been far too easy to acquire Maori lands for public use,’ the letter says.

The rest of the *Waikato Times* article addressed efforts at that time to re-acquire the lands taken for an airstrip during the Second World War and the repeated attempts by Council planners to zone private Maori land on the Raglan coast as scenic and recreational reserves. The Tribal Committee had the support of the Tainui Maori Trust Board, the Centre for Maori Studies at Waikato University and the Centre’s Director, Robert Mahuta.²⁴⁴

Later in October 1973 the *Waikato Times* reported that the Tainui Tribal Committee’s objections were going to be ignored by the Raglan County Council. David Alexander commented in his report on Public Works takings in the Rohe Potae Inquiry District that it was ‘likely that the Committee’s objection was disregarded by the County Council, because it was not from the Maori owner of the land.’²⁴⁵

The taking of Maori land is unlikely to be an issue when Raglan County Council completes negotiations paving the way for its \$330,000 sewerage scheme. This is despite the fact that Maori land losses to public works are among the grounds for an objection lodged by the Tainui Tribal Committee. The council plans to take 22 acres of land for oxidation ponds. Eight acres of this belongs to Mr Tutuira Waretini, now living in Hawke’s Bay. Objections close late this month. So far only one has been lodged, by the tribal committee. The committee has also written to Western Maori MP Mr K.T. Wetere, seeking his support. Grounds for the objection include ‘the loss of too

²⁴⁴ ‘Maoris to fight for 8 acres earmarked for sewerage plan,’ *Waikato Times*, 6 October 1973. YCBE a801 1990 Box 146 a 21/20/1 8036, Archives NZ Auckland (supporting papers #114)

²⁴⁵ Wai 898, #A63, p 260

much land by Raglan Maoris through acquisition for public use' and 'the further loss of Maori coastal lands.' But Mr Waretini confirmed today that he had 'Europeanised' his land – to remove it from the aegis of the Maori Trustee. Under the Maori Affairs Amendment Act, four owners or less can take this action. It removes the land from the control of the Maori Affairs Act – placing it on the open market without recourse to the Maori Land Court being necessary. Mr Waretini said today the Maori Trustee was taking too much control of Maori land, in some cases leasing it without the sanction of the owners. 'In many instances we might own the land but the Maori Trustee is the boss,' he said. Altogether, Mr Waretini had Europeanised 30 acres of his land for this reason. Mr Waretini said he would not be lodging an objection to the council's proposal, but would support the tribal committee.²⁴⁶

The Tainui Tribal Committee's letter to the Western Maori MP Koro Wetere prompted Wetere's office to write to the Minister for the Environment enquiring about the effects of the proposed sewage discharge on the general health of the harbour and the fisheries contained within it. The Minister attempted to temper Wetere's concerns by stating that the objections heard under the Town and Country Planning Act had been dismissed, shellfish areas would not be affected and that the scheme had received the support of the Department of Health.²⁴⁷

The Waikato Valley Authority assured the Minister for the Environment that there was ample treatment of the discharge in oxidation ponds and that the location of the outfall would provide 'for ample mixing irrespective of classification.'²⁴⁸

In March 1974 Wetini Mahikai Tuteao sent a telegram to the Minister for Maori Affairs, Matiu Rata, regarding the proposed sewage system. 'All tribes in Raglan county area disturbed at [the] intention of oxidisation ponds in marae area...alternative suggested for pollution away from marae and settled areas...tribes would welcome meeting with you in

²⁴⁶ 'Only one objection to taking of land for sewage disposal,' *Waikato Times*, 17 October 1973. YCBE a801 1990 Box 146 a 21/20/1 8036, Archives NZ Auckland (supporting papers #115)

²⁴⁷ Minister of the Environment to Western Maori MP, 19 December 1973. AATE W3391 889 Box 39 75/11/2/2 Archives NZ Wellington (supporting papers #116)

²⁴⁸ Waikato Valley Authority to Minister of the Environment, 25 January 1974. AATE W3391 889 Box 39 75/11/2/2 Archives NZ Wellington (supporting papers #117)

Raglan at your convenience.’²⁴⁹ The Minister for Maori Affairs’ response to Tuteao was not located but he wrote in another letter that he and the Western Maori MP, Koro Wetere, could arrange for a time to both visit the area and to meet the people in the area who had expressed their objections.²⁵⁰ It is unclear if a visit ever occurred.

In August 1974 Wetini Tuteao wrote to the Minister of Health complaining about the discharges from the oxidation ponds that were being built in Raglan.²⁵¹ He was apprehensive about the effect of the sewage scheme on the harbour and shellfish in the harbour. His letter did not survive in the archive but some of his concerns can be garnered from the response he received from the Minister of Health.

The ponds are part of a much-needed sewage disposal scheme. This scheme has been examined, and approved, by the Ministry of Works and Development and the Department of Health. It has also been examined by the Water Resources Council, which is responsible for maintaining the purity of the waters in Raglan Harbour, and a ‘right’ has been granted, under the Water and Soil Conservation Act 1967, which will permit the discharge. The discharge will be a purified effluent which will not affect the quality of the waters into which it is made. The completion of the scheme, as planned, will result in a substantial improvement in the quality of the harbour waters which have, particularly in recent years, been polluted by increasing amounts of untreated sewage. In view of the high standard of the treatment that the oxidation ponds will afford, and of the ample dilution that the harbour waters provide, the effluent will not pose any threat to the shellfish areas in which you are interested. There is, therefore, no justification for stopping the works or altering the plan which they are following.²⁵²

The Ministry of Works and Development was aware of this opposition as the Hamilton District Commissioner of Works commented in a letter to the Commissioner of Works that the proposed oxidation ponds may have to be reduced in area, which would necessitate a new

²⁴⁹ Wetini Mahikai Tuteao to Minister for Maori Affairs, March 1974. AATE W3391 889 Box 39 75/11/2/2 Archives NZ Wellington (supporting papers #118)

²⁵⁰ Wai 898, #M17, p13; Minister of Maori Affairs to Associate Minister of Works & Development, 6 March 1974. AATE W3391 889 Box 39 75/11/2/2 Archives NZ Wellington (supporting papers #119)

²⁵¹ Wai 898, #M17, p13

²⁵² Minister of Health to Wetini Tuteao, 26 August 1974. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #120)

water right. He commented that the water right 'would presumably be open to public objection and which would therefore be undesirable at this late stage.'²⁵³

After the RCC rejected tangata whenua objections, Tuaiwa Eva Rickard wrote to the Chairman of the Waikato Valley Authority to see if the Authority would be able to alter the manner in which waste would be discharged at Raglan. The objections Rickard made to the RCC were that the proposed site was too close to Poihakena Marae, Maori residences, burial sites and other 'sacred places' and recreation areas; the shellfish grounds would be polluted; and the proposed site would further the loss of Maori-owned coastal lands as too much Maori land in Raglan had already been taken through the Public Works Act. Rickard appealed for the Authority's help:

As the Raglan Harbour is now under the jurisdiction of your department, we would like to send a delegation to your Department for a full discussion on the environmental problems caused by a scheme of this kind...Although the Health Department has put their approval to the Scheme, we disagree that the shellfish will not be contaminated...We would like a reply as soon as [is] convenient, we realise the pressure local bodies are subjected to, nevertheless seeing our objections were disallowed we do not intend to let the matter rest. We the Maori race are natural conservationists. Devastation of our forests, fisheries and pollution came with the white man's progress. We feel not enough research has gone into providing Raglan with a better Sewage Scheme than the one proposed...²⁵⁴

While the response of the Authority was not found it clearly had sided with the RCC as the sewage scheme was kept.

The Minister of Health's response to Wetini Tuteao was taken up by the Raglan-based Tainui Tribal Committee led by its Chairman, Tex Rickard. He wrote to the Minister of Health in August 1975. The Medical Officer of Health in Hamilton's responses are provided next to the question in italics:

²⁵³ Hamilton District Commissioner of Works to the Commissioner of Works. 1 November 1974. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #121)

²⁵⁴ Tuaiwa Eva Rickard to the Waikato Valley Authority, 21 February 1974. Waikato Regional Council File 60 66 83A Vol 1 (supporting papers #122)

Could you please supply clarification of the statement that the proposed Raglan Oxidation Pond shall supply a high standard of treatment. (emphasis in original) Also to make such a statement perhaps we could be informed whether:

(1) Wind tests have been made in the proposed ponding area: *Wind tests have not been taken. The normal recommended buffer zone was established and defined by the Raglan County Council in their district scheme.*

(2) Current outfalls or effluent into the harbour have been made: *This is not understood, however the question may apply to existing outfalls of which there are several but these will become redundant when the new scheme is in operation.*

(3) Current standard of harbour water established: *No. A Water Right was issued by the Water Allocation Council on 27 January 1971.*

(4) Any test have been made on shellfish in the harbour: *No, this was not considered necessary (see copy of the attached letter from the County Clerk of the Raglan County Council dated 12 April 1973)*

(5) Tertiary treatment has been considered. We consider such factors are vital in establishing such opinion, we await your early comment: *Tertiary treatment was not considered necessary for the scope of effluent.*²⁵⁵

The Director of the Division of Public Health in Wellington wrote to their Hamilton office ‘to please report progress to date and comment on the likely source of the letter to the Minister, whose contents obviously do not originate from the Tainui Maori Committee. This office understands that the ponds have been resited and the length of the outfall increased by 50%.’²⁵⁶

The Hamilton Medical Officer of Health responded:

We would agree with your comment that it is unlikely the questions originated from the Tainui Maori Committee. We are of the opinion that the person prompting the committee is [a Raglan resident] who, until his resignation last year, was a Health Inspector for the Hamilton City Council, and is something of a bush lawyer. We have had correspondence with Mr Witchell and copies

²⁵⁵ James Rickard to Minister of Health, 12 August 1975; Hamilton Medical Officer of Health to Head Office, 27 August 1975: YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #123)

²⁵⁶ Public Division of Health Director to Hamilton Office, 22 August 1975. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland

are attached for your information. Regarding his letter of 18 August 1975, it is our intention to inform him that in view of the numerous issues that could arise the matter would be best solved by discussion with the Medical Officer of Health to whom he should apply for a suitable meeting date. It is not our intention to enter into any further correspondence with Mr Witchell. As to the queries raised by you: 1. There has been no construction work on the pond. 2. The source of the letter has been answered above. 3. There has been minor re-siting of the ponds to suit property and topography without encroaching on the buffer zone. 4. The length of the outfall has been increased by approximately 50% to take it into the harbour entrance channel.²⁵⁷

Tex Rickard also wrote a letter to the Raglan County Engineer: 'With reference to a letter to the Hon.J.Walding [Minister for the Environment] dated 25th January 1974, in which the Waikato Valley Authority states that there are two proposed Oxidation Ponds for Raglan, one of 8 acres and the other secondary pond of 6 acres. Could you please clarify this issue as we have heard rumours that there will only be one pond constructed also, could you please give details of wind tests taken in the proposed Pond area.'²⁵⁸

The County Engineer replied in late August 1975: 'I confirm that in accordance with our Authority the oxidation ponds for Raglan are designed as 2-stage ponds although there have been some minor variations suggested to us which are in line with recent experience. These have been fully discussed with the appropriate Departments and are incorporated following suggestions from them. No particular wind tests have been taken and it has been our observation that there is sufficient air movement at all times to induce proper working of these ponds.'²⁵⁹

²⁵⁷ Hamilton Medical Officer of Health to Head Office, 27 August 1975. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #124)

²⁵⁸ James Rickard to Raglan County Engineer, 12 August 1975. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #125)

²⁵⁹ Raglan County Engineer to James Rickard, 27 August 1975. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #126)

As Chairman of the Tainui Maori Committee, Rickard then wrote to the Commissioner for the Environment in November 1975 to express his concerns about the proposed sewage scheme being developed in the Raglan Township.

In your letter you suggest that there must be extenuating circumstances to justify the preparation of Environmental Impact Assessments or Reports. With regard to the proposed Raglan Sewage Scheme, I firmly believe that such circumstances exist. This is not a personal feeling as many of the local residents have expressed deep concern over aspects of this scheme ever since it was first mooted. As they do not fully appreciate the proper procedures for public objection they have urged me to convey this concern to the appropriate authorities in the hope of obtaining some modification to the present scheme so as to achieve a proposal which would be more accessible to those local residents who are directly affected by such a scheme.²⁶⁰

Rickard questioned ‘the depth and adequacy of the investigations undertaken to ensure that the final scheme does not have any detrimental effect on the environment.’ He noted that the ‘three main features of the scheme which are causing concern’ were the siting of the oxidation ponds, the siting of the sewage outfall into the harbour and the siting of the pumping station on the ‘Poihakena burial grounds behind the Marae.’²⁶¹

The most disturbing feature of the entire scheme is the siting of the oxidation ponds immediately adjacent to the main road, which leads to several very popular recreational and scenic reserves, including seaside sub-divisions and an internationally renowned surfing spot. This site is also in close proximity to the Raglan Golf Links and the only Maori Marae in the district. From Raglan County Council (R.C.C.) plan 2465/1, the ponds are shown to be located within 66 feet of the banks of the Pokohue River which, downstream, flows through a swimming area that serves the largest camping ground in the region. With these ponds so close to this river the prospect of it becoming polluted by underground seepage etc is very real, especially when one bears in mind the two recent cases reported in the news this month where losses of effluent from sewage oxidation ponds occurred with subsequent contamination to the surrounding environment. In both cases seepage was suspected as the source of contamination.

²⁶⁰ James Rickard to Commissioner for the Environment, 3 November 1975. Ministry of Transport File 21/11/75, Waikato Regional Council (supporting papers #127)

²⁶¹ James Rickard to Commissioner for the Environment, 3 November 1975. Ministry of Transport File 21/11/75, Waikato Regional Council (supporting papers #127)

I have sought professional advice on the design and operation of sewage treatment oxidation ponds from Mr D. A. Ferrier, Chief Public Health Engineer with the Ministry of Works and Development, Wellington. From information forwarded by Mr Ferrier, it is well emphasized that an oxidation pond will work properly only (emphasis in original) if it is located in an area where there are continuous and adequate natural air movements or air currents. In a letter received from the Raglan County Engineer dated 27th August 1975, it is stated, quote, 'No particular wind tests have been taken, and it has been our observations that there is sufficient air movement at all times to induce proper working of these ponds.' I find it extremely alarming that the RCC has not endeavoured to take proper wind tests to ensure that there is adequate air movement in the area of the proposed pond site. The lack of adequate wind is particularly disturbing when one considers that: - (i) the prevailing wind is South-Westerly (ii) the proposed ponds are located in a relatively sheltered valley which has an almost perpendicular disposition to the prevailing wind i.e. the ponds are sheltered from the prevailing winds by the hills on the Eastern and Western sides of this site. (iii) the RCC office is located at Ngaruawahia, some 65 KM away from this site. Consequently it is doubtful whether the frequency of the observations made by the RCC staff can be considered as adequate when determining if there is sufficient air movement at all times to induce proper working of these ponds. I am quite sure that there would be no aesthetical value to be derived from these ponds which the public, using the road, will unavoidably view.

In our submissions at the RCC's hearing of objections to the initial scheme we pointed out that the exact area where the proposed ponds are to be sited had a very significant Maori Historical Value. This area has been known for hundreds of years as Te-Rua-O-Te-Ata, the domain of Te Atai o Rongo, Taniwha protector of all Tainui Tribes, and as such has been acknowledged by reputable historical publications relating to the Tainui people and the Waikato area.

In appreciating the surrounding topography and the extent to which the low lying area of this valley extends southwards away from the road, it is readily apparent that a more suitable site is available further up the valley and away from the main road and the proposed site. The siting of these ponds at this alternative site would overcome many of the disadvantages associated with the present scheme. This alternative site would result in the ponds being located closer to an area that is used as a rubbish tip and I am sure that this would be a most desirous achievement for both the environmental and land use planning considerations. Naturally, proper tests and investigations to assess the suitability of this site would have to be carried out. Because this site is more exposed to the prevailing winds I am sure that a generally more acceptable scheme would result.

The only apparent disadvantage that this site may have is that there would be an additional piping cost involved but this cost would be negligible in terms of the piping required for the whole scheme and the environmental protection achieved. The expansive sandhill area across the Raglan Harbour provides another ideal site for the oxidation ponds. This alternative would require the sewage to be piped across the bed of the Harbour to the sandhill area, in the same manner as the Katikati Borough Sewage Scheme provides for piping across the sea bed to discharge on Matakana Island. From these sandhills, the treated effluent can be easily be discharged into the open sea without having to pass through the Harbour waters. However, it will be necessary to ensure that this does not have any adverse effect on the Harbour.²⁶²

The outfall was another major concern, specifically its affect on customary fisheries. The outfall was located far too close to shellfish beds that local residents had used for many years. It was also claimed that the outfall would negatively affect other customary fisheries that were not located directly adjacent to the outfall but were still close enough to cause problems:

The present scheme proposes to discharge treated effluent into the Raglan Harbour waters in an area where many of us local residents obtain mussels and pipis from the shellfish beds known as Pipiroa. We consider that it would be disastrous if this effluent discharge were to contaminate or pollute the shellfish beds...The appropriate tests should be carried out on the quality of the Harbour waters and shellfish to provide a basis for comparison when assessing if treated effluent will cause undesirable levels of pollution, particularly to the shellfish beds. The RCC have stated that treated effluent will be discharged on the ebb tide so that the discharge will be carried out to sea. When bearing in mind the apparent disregard for adequate tests and investigations for this scheme, I would be anxious to know if proper tests have been carried out to prove if the particular water movement and tidal characteristics of this harbour will in fact be able to perform this effluent dispersal function under normal and extreme periodic conditions.²⁶³

Another concern with regards to the outfall pipe was the effect of the physical structure on the seabed surface. Rickard feared that changes to the seabed surface would increase the rate of erosion. :

The installation of the outfall pipe will undoubtedly result in some disturbance to the present sea bed surface and tidal and harbour currents. This situation should be avoided at all costs because about 10 years ago a bulldozer made a

²⁶² James Rickard to Commissioner for the Environment, 3 November 1975. Ministry of Transport File 21/11/75, Waikato Regional Council (supporting papers #127)

²⁶³ James Rickard to Commissioner for the Environment, 3 November 1975. Ministry of Transport File 21/11/75, Waikato Regional Council (supporting papers #127)

slight channel in the sand bed to improve culvert drainage from a sub-division being developed at the time. However, this disturbance alone was enough to effect a change in currents and start a continuous process of erosion, which ultimately resulted in the Marine Department stopping any further work on the sub-division. There was also a subsequent change in the position of the main channel over the sand bar at the Harbour entrance. There must be some assurance that any proposed works affecting the harbour will not cause changes in the sea bed to such an extent that it could prevent the present shipping from using this Harbour. It should also be noted that this outfall will be discharging in close proximity to a very popular swimming area. It seems incredible that the RCC was able to obtain approval from the authorities concerned, to discharge treated effluent into this harbour without being subject to the impending classification of the Harbour waters.²⁶⁴

Rickard also questioned the motivations behind the development of the sewage scheme:

From my involvement with, and enquiries into this scheme, it has unfortunately become more apparent that the decisions and approvals related to this scheme have been based more on a commitment to expedite the financial and works programme rather than on adequate investigations, standards, and current guidelines for planning and environmental protection. We consider that it is especially important that the Raglan Sewage Scheme should satisfy all environmental requirements. We base this consideration on the fact that Raglan is the largest of the only three seaside holiday resort areas on the West Coast between Auckland and New Plymouth, and being a relatively unique recreational and scenic resource as such, it should be subject to more stringent environmental protection than that which might apply to the more populous inland townships.²⁶⁵

Rickard's letter to the Commissioner for the Environment concluded with a number of recommendations related to the production of an Environmental Impact Report. These recommendations addressed a number of the concerns that tangata whenua had with the proposed sewerage system. Rickard recommended further scientific testing to ensure that the effluent would not contaminate shellfish beds or the recreational swimming areas located nearby:

²⁶⁴ James Rickard to Commissioner for the Environment, 3 November 1975. Ministry of Transport File 54/11/140, Waikato Regional Council (supporting papers #127)

²⁶⁵ James Rickard to Commissioner for the Environment, 3 November 1975. Ministry of Transport File 54/11/140, Waikato Regional Council (supporting papers #127)

- (i) Wind tests at each of the above sites for an adequate period including the peak Xmas holiday period.
- (ii) Sub soil bore investigations to determine susceptibility to underground seepage.
- (iii) Tests to confirm whether normal and extreme periodic tidal action will adequately carry peak effluent discharges on ebb tide out to sea.
- (iv) Tests to ensure that treated effluent discharge will not pollute or contaminate the shellfish beds or contravene the impending classification for the Raglan Harbour waters.
- (v) Photographs showing markers indicating the full extent of each alternative pond site so that an artist can accurately superimpose the proposed works. These photographs to be taken from any roads or other public places from where the ponds will be visible.
- (vi) That the site be visited by representatives of RCC, MWD, Health Department and other interested parties.
- (vii) A full cost comparison on all alternatives.
- (viii) The environmental impact report and all related documents made public.
- (ix) Opportunity be given for public submissions, objections and queries on the report.

It is unfortunate that the planning has reached such an advanced stage with the various required approvals obtained. However, this commitment should not be allowed to prevent a proper Impact Report from being carried out. As the acceptance of tender for the associated works is imminent, this matter should be given the utmost urgency, so that the impending constructions works can be delayed until after this required Impact Report has been fully assessed. In conclusion I must add that we fully appreciate the need for the sewage scheme, but we sincerely question whether the present proposal has been conceived with the full interests of the local people and environment in mind.²⁶⁶

Rickard also sent his letter to the Commissioner for the Environment to the Minister of Transport. He expressed his concern about ‘the implications of the above proposed scheme’ and asked if the Minister could ‘advise if this scheme is compatible with the requirements of the Harbours Act which I understand you administer.’²⁶⁷

²⁶⁶ James Rickard to Commissioner for the Environment, 3 November 1975. Ministry of Transport File 21/11/75, Waikato Regional Council (supporting papers #127)

²⁶⁷ James Rickard to Minister of Transport, 5 November 1975. Ministry of Transport File 21/11/75, Waikato Regional Council (supporting papers #128)

The Director of the Marine Division at the Ministry of Transport replied to Rickard that applications for discharges of waste such as sewage into the sea was made through Regional Water Boards and that the Ministry of Transport's involvement was limited to the provisions contained in the *Harbours Act 1950*. This required the Ministry's prior approval to 'the placing of any structure (e.g. outfall pipe) on the foreshore or seabed.' Before recommending such approval the Ministry would 'look into such factors as possible restrictions on navigation, the present and likely uses of the area, and the possibility of erosion or other related effects.' In November 1975 the Raglan County Council had not yet sought approval for the siting of an outfall over the seabed but the Director would ensure that the Council was 'aware of these requirements.'²⁶⁸

3.1.2 Stalled development of the sewage scheme – Mid 1970s to mid 1980s

By late 1974 it had become apparent to the Council that the price of the sewage system had begun to exceed the amount of funding available to the Council.²⁶⁹ New applications needed to be made to the Local Authorities Loans Board for further loans and to the Department of Health for further subsidies.²⁷⁰ In April 1975 the costs of the sewage system had escalated to \$735,000 from the original \$491,000 estimate in 1972. The result was a 32.5 percent increase in rates for Raglan residents.²⁷¹ The increase in costs was based on a number of factors. The costs for the construction of the oxidation ponds had been vastly underestimated, an additional pump stations was now necessary, the length of the outfall to

²⁶⁸ Director of Marine Division to James Rickard, 18 November 1975. Ministry of Transport File 21/11/75, Waikato Regional Council (supporting papers #129)

²⁶⁹ 'Council faced with new cost escalations in sewerage scheme,' *New Zealand Herald*, January 1975. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #130)

²⁷⁰ Hamilton District Commissioner of Works to Raglan County Engineer, 14 January 1975. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #131)

²⁷¹ Raglan County Clerk to Hamilton Medical Officer of Health, 22 April 1975; 'Sewerage scheme is cause of big rise in Raglan town rates,' *Waikato Times*, 27 May 1975; YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #132)

the harbour had been increased by 50 percent to discharge in a 'more satisfactory position,' and land values had tripled for the areas slated for taking under the Public Works Act.²⁷²

The County Council applied for a right to discharge 2,000 gallons per pumping station (there were 11) under emergency conditions to the Regional Water Board, the Waikato Valley Authority.²⁷³ Before the Authority could approve the right a last minute objection was received from the Environmental Defence Society (EDS).²⁷⁴ While the objection delayed matters, the Ministry of Works began to argue that an emergency overflow contingency would not be necessary if an effective alarm system was installed, a mobile standby generator was provided and the town's water supply turned off. If an overflow then occurred at a manhole, the Waikato Valley Authority and the Department of Health would be notified. It was felt that with those precautions 'there would be no need for overflows which would eliminate the problems associated with overflows discharging into shellfish and beach waters.'²⁷⁵ The Council agreed to all of the above conditions.²⁷⁶ Eventually an additional \$33,000 loan was sought by the Council to finish the scheme in 1976.²⁷⁷

The sewage system was completed at the end of 1976. The Department of Health, the Ministry of Works and Development and the Ministry of Transport exchanged some correspondence to formally establish the sewage system, including the outfall to the harbour. There seemed to be little faith in the Raglan County Council in case of an overflow even from the Department of Health. The Supervising Inspector of Health noted in an internal

²⁷² Resident Engineer Hamilton to District Commissioner of Works Hamilton, 30 May 1975. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #133)

²⁷³ Raglan County Engineer to Hamilton Medical Officer of Health, 9 September 1974. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #134)

²⁷⁴ 'Objections halt plans,' *Waikato Times*, 24 October 1974. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #135)

²⁷⁵ Hamilton District Commissioner of Works to Raglan County Engineer, 3 March 1975. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #136)

²⁷⁶ Raglan County Engineer to Hamilton District Commissioner of Works, 11 March 1975. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #137)

²⁷⁷ Raglan County Engineer to Hamilton Medical Officer of Health, 23 March 1976. YCBE a801 1990 Box 146 a 21/20/1 8036, Archives NZ Auckland (supporting papers #138)

memorandum that he had ‘no particular faith in the Raglan County Council Engineering Services, believing that if they had a discharge, they would not treat it urgently.’²⁷⁸ The Hamilton District Commissioner of Works commented, ‘I wonder whether storage is in fact necessary taking into account that the effluent will always be discharged on the ebb tide.’²⁷⁹

Maori protests and objections continued to be ignored as the sewage system slowly began to be installed. The *Waikato Times* reported that the fears of Raglan residents regarding the pollution were ‘unfounded’.

Fears that effluent discharges into Raglan Harbour from the town’s sewerage scheme will harm marine life are unfounded, according to the County chairman Mr R.P. Kellow. The possibility of pollution of the harbour through effluent discharge is worrying some residents – particularly Maoris – but Mr Kellow said today there was no likelihood this problem would occur. There are fears traditional mussel beds could be harmed by discharges, and by effluent seepages from oxidation ponds once they are operational. The \$750,000 system is due to be commissioned later this year. Mr Kellow said the discharge of effluent from the ponds would be during an emergency only – and this was unlikely to occur with extra pumps and equipment being made available. If any discharge was made, it would be on the low, outgoing tide and below shellfish areas, he said. Effluent discharged from the ponds would contain coliform bacteria which could affect mussel beds, according to a retired health inspector and Raglan resident Mr Kerry Witchell. The effluent to be discharged should be examined to see what effects it would have, he said. ‘Fish thrive on that sort of thing, but in shellfish it causes food poisoning. And a lot of people get their mussels from the harbour.’ No tests had been done on the water quality. ‘It’s sickening to see that this will be pushed out into the harbour without any tests on the water quality and the effects on sand patterns,’ he said. The oxidation ponds were also very poorly sited. They were in a gully, when they should be exposed. ‘The prevailing winds from the west will be wafting the smell from the ponds right into the township,’ he said. Mr Witchell said the front oxidation pond – about 200 metres from the pa and about 30 metres away from the waterside – was also being troubled with underground salt water seepage. Mr Kellow said there was no salt water seepage in any of the ponds, and there would be no seepage back out. The

²⁷⁸ Supervising Inspector of Health, ‘Raglan County Council letter to District Commissioner of Works of 30 January 1975,’ 28 February 1975. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #139)

²⁷⁹ Hamilton District Commissioner of Works to Raglan County Engineer, 14 January 1975. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #140)

effect of any smell from the ponds would be minimal. ‘It won’t be that terrible to have to put up with,’ he said. The siting of the ponds was the best within the economic ability of the people to pay for the scheme, he said. The Tainui Tribal Committee at Raglan two months ago asked the Commissioner for the Environment that an environmental impact reported be produced. This request was turned down. The commissioner said that all reasonable steps that could be taken had been taken.²⁸⁰

The Maori objectors had not considered that all reasonable steps had been taken.

Before the sewage scheme was implemented in 1977, the Waikato Valley Authority conducted bacteriological tests for coliforms in the water. ‘The aim of the survey was to obtain baseline bacteriological data on Raglan Harbour so that before and after conditions may be known and changes, if any, in the water quality may be ascertained subsequent to the commissioning of the town’s oxidation ponds.’ Samples were taken at the Wharf, Bow Street Jetty, the Kopua camping ground, Ocean Beach and Manu Bay. The results of the survey were generally low total and faecal coliform densities across the different sites so that the waters met the bacteriological requirements for Class SA waters (coastal waters from which edible shellfish are regularly taken for human consumption) and Class SB waters (coastal waters used for bathing).²⁸¹

Despite the sewage scheme having been considered operational by March 1977, in June 1977 emergency overflows were already taking place. The Raglan County Engineer informed the Hamilton Medical Officer of Health that effluent would be discharged into the Harbour due to the completion of only one of the oxidation ponds. The construction of the second oxidation pond ran into problems as a result of weather and difficulties with rock excavation. ‘The result of these delays has been that the first pond is now filled to the stage where storage is no longer available, and discharge into the upper reaches of the harbour is

²⁸⁰ ‘Raglan pollution fears unfounded,’ *Waikato Times*, 1 March 1976. YCBE a801 1990 Box 146 a 21/20/1 8036, Archives NZ Auckland (supporting papers #141)

²⁸¹ Waikato Valley Authority Resource Manager, ‘Raglan Harbour Water Quality Study,’ 11 March 1977. YCBE a801 1990 Box 146 a 21/20/1 8036, Archives NZ Auckland (supporting papers #142)

occurring. Recent very wet weather accentuated the problem, and it appears that we shall have to continue the discharge until either the second pond is completed to the stage where it can be used or until the outfall pump station and line can be used. I am informed that the effluent is of good quality, and is very well diluted at this stage with stormwater. It thus appears that the probability of any pollution occurring is minimal.²⁸²

The Hamilton District Commissioner of Works also wrote to the Hamilton Medical Officer of Health regarding the overflows. '[E]ffluent from the secondary pond is being discharged into the stream adjacent to the ponds. Although the stream discharges into the estuary which runs past the township, it would appear that there is very limited risk to health taking into account that the estuary would have very little use at this time of year. The county engineer was reminded that a water right should have been obtained for the present temporary discharge but if his estimated timing of the permanent outfall is correct the outfall will be completed before a water right could be obtained. However, it was recommended that the regional water board be advised on the matter.'²⁸³ The Executive Officer of Community Health at the Hamilton Office also wrote to the Supervising Inspector of Health regarding the issue of a discharge by the County without a water right. '[I]t was our opinion that although the stream was discharging into the estuary we consider as very little use was made of the water at this time of the year there was likely to be very little risk.'²⁸⁴ This view was also shared by others in the Department of Health. During a meeting with a Ministry of Works

²⁸² Raglan County Engineer to Hamilton Medical Officer of Health, 14 June 1977. YCBE a801 1990 Box 146 a 21/20/1 8036, Archives NZ Auckland (supporting papers #143)

²⁸³ Hamilton District Commissioner of Works to Hamilton Medical Officer of Health, 14 July 1977. YCBE a801 1990 Box 146 a 21/20/1 8036, Archives NZ Auckland (supporting papers #144)

²⁸⁴ Executive Officer Community Health to Supervising Inspector of Health, 9 August 1977. YCBE a801 1990 Box 146 a 21/20/1 8036, Archives NZ Auckland (supporting papers #145)

official a Health official stated that ‘shell fish in the harbour [was] not seriously affected by past sewage discharges because of a big tidal flush.’²⁸⁵

Following problems with overflowing discharges in mid-1977 the Tainui Tribal Committee again wrote to the government, this time to the Waikato Valley Authority.

I wish to draw your attention to the conditions of the Water Right of which the Raglan County Council has not complied with. We submit for your consideration: (1) (a) The location of the outfall is a deep drain adjacent to the first pond, the effluent flows from this drain into the Pokohue stream and has done so continuously for the past month. (b) Sewage is being discharged without secondary ponding as the second pond of six acres has not been completed. (c) Discharge is far beyond the 200,000 gallons a day approved and it is not restricted to ebb tide periods only. The Raglan County Council has been notified on three occasions regarding the discharge. At a Ratepayers meeting held at Raglan recently the Raglan County Engineer was asked, when would the discharge cease, he stated that the conditions would not improve until the discharge line from the ponds to the harbour entrance was completed. The Engineer was also asked if the County would erect signs warning the Public against gathering shell fish from this area, he stated that this was not necessary. We look forward to one of your officers visiting the ponding area and if possible meeting some of our Committee to discuss this matter.’²⁸⁶

The Waikato Valley Authority’s reply stated:

For your information Raglan County Council on 18/7/77 filed an application for a Right to discharge from the oxidation pond into the area of Raglan Harbour now the subject of your concern. The application at present stands under public notification and will be processed in the usual manner in terms of the relative statute. Again for your information, in mid June of this year, Raglan County Council advised the Medical Officer of Health of the difficulties being experienced and the temporary necessity to discharge to the harbour other than at the approved location off Ocean Beach. I understand from enquiries that while the risk to health is minimal the Medical Officer of Health nevertheless, is maintaining a close watch on the position. I am informed this day that the contractor recommended work on Monday 8/8/77, in laying the final section of the discharge line and it is expected that by the end of September 1977 i.e. next month, all work will be completed, with

²⁸⁵ ‘Raglan Sewerage and sewage treatment,’ 21 September 1977. YCBE a801 1990 Box 146 a 21/20/1 8036, Archives NZ Auckland (supporting papers #146)

²⁸⁶ James Rickard to Waikato Valley Authority, 3 August 1977. YCBE a801 1990 Box 146 a 21/20/1 8036, Archives NZ Auckland (supporting papers #147)

abatement of the temporary discharge. While I trust that the above will allay your concern to a large degree, I am now assured that the position will be closely watched and the works will proceed with all diligence towards total remedy of the position in the very near future.²⁸⁷

In the following year the *Waikato Times* reported that ‘local Maoris were last year outraged when sewage spilt into a creek below the ponds...The Maoris regarded the creek as the home of a sacred local taniwha, and afterwards claimed to have put a curse on the sewerage works.’²⁸⁸

In December 1977 it was finally reported that the pump station and electrical work had been installed and emergency discharges could cease. Nonetheless while the pump station was ready, the outfall to the harbour had suffered damage from storms and was in need of repair.²⁸⁹ The Senior Inspector of Health and the Deputy Medical Officer of Health met with four Raglan residents along with Tex Rickard at the damaged outfall on the foreshore of the harbour. Although the Senior Inspector’s report noted that Rickard and the other residents ‘expounded their views regarding the situation and what they considered was pertinent for a solution’ he did not elaborate on their views or proposed solutions. He reported that the ‘outfall (200mm asbestos cement pipe) had been severely scoured along its length due to tidal flows in the pond of which it ultimately discharges into, prior to final discharge into the Raglan Harbour.’ The outfall had been in place for only ‘two to three weeks before the collapse occurred.’ The Senior Inspector felt that the outfall pipe had to be

²⁸⁷ Chief Executive of the Waikato Valley Authority to James Rickard, 11 August 1977. YCBE a801 1990 Box 146 a 21/20/1 8036, Archives NZ Auckland (supporting papers #148)

²⁸⁸ Kerry Witchell, the same Raglan resident who had made the two marine farming applications in the 1980s and 1990s that were discussed in the section on customary fisheries, phoned the Raglan office of the Department of Health to inform them that the ‘effluent could have contaminated shellfish beds and places where children play.’ He suggested that the Department of Health pressure the County Council to put up a sign at the camping grounds warning about the effects of effluent on the shellfish and bathers. ‘Kerry Witchell phoned in Raglan,’ 26 August 1977; ‘Beach erosion cuts sewer line,’ *Waikato Times*, 28 February 1978: YCBE a801 1990 Box 146 a 21/20/1 8036, Archives NZ Auckland (supporting papers #149)

²⁸⁹ Raglan County Engineer to Hamilton Medical Officer of Health, 12 December 1977. YCBE a801 1990 Box 146 a 21/20/1 8036, Archives NZ Auckland (supporting papers #150)

moved to another location because ‘no matter how deep the pipe is buried it would always be subject to hydraulic pressure.’

To this end I would consider that serious consideration be given to relocating the outfall regardless of what the opposition was from the Marine Department, to a point south-west of the Golf Club on the foreshore (on the bend of Ocean Beach Road) at this point the outfall would gain access to deeper water in reasonably acquiescent conditions in a very short space along the length of the pipe...Urgency is required as any relocation of a permanent nature must be done before the winter storms are experienced. Would consider that at the present time there is no health hazard created and aesthetically it is certainly not pleasing for the residents and it may take a little time before a long term solution is reached by all parties concerned.²⁹⁰

The Raglan County Council wrote to the Waikato Valley Authority to inform them that the Council was experiencing difficulties in maintaining their sewage outfall pipe and subsequently a variation would be necessary for their water right. The Council explained that almost immediately after the pipe was installed ‘severe changes in beach profile took place.’

A low area developed approximately 20 m in from the channel edge, and several lengths of pipe which it was believed were buried sufficiently deep to be stable, were lost. The outer length on piles was distorted but is still standing. Since then, much of the remainder has been piled and buried approximately 1 m deep. Beach erosion has continued with the development of a large lagoon in the area, the removal of more than 2 m of sand, and further damage to the upper end of the line adjacent to H.W. Mark. Instructions have been given to the contractor to restore the currently damaged section but in the meantime, the discharge is being made at the site of the disruption, approximately 15 m below H.W. Mark. Observations made by residents of the area are not unanimous in regard to the stability of the beach but most opinion is that there are rocks and an old barge visible in the area that have not been seen for periods of up to forty years. Our own observations are that the subsidiary low area inside the nominal channel line is a new development, that the lagoon also is greatly increased in depth and area, and that severe erosive action has taken place back against the sand dunes where a

²⁹⁰ Senior Inspector of Health Hamilton, ‘Raglan Oxidation Pond Outfall,’ 17 February 1978. YCBE a801 1990 Box 146 a 21/20/1 8036, Archives NZ Auckland (supporting papers #151)

water pipe buried against the hill face is now exposed and sand cliffs are now over 3 m high, where six months ago they were approximately half that.²⁹¹

The District Commissioner of Works also informed the Commissioner of Works of the situation. He stated that the location of the outfall had taken into account ‘sensitive local reaction to a harbour outfall into an area claimed to be shellfish beds.’ He felt that the new outfall would probably require a new water right and the District Commissioner commented that ‘it would seem likely that there could be objections to an outfall further up the harbour and consequently there could be delays in re-locating the outfall.’²⁹² The new outfall pipe was to be located approximately 400 metres east of the first site further into the harbour and it would fall within the original water right.²⁹³ The District Commissioner of Works thought that local bach owners would accept the new location for the outfall ‘but this may not be accepted by local Maoris.’²⁹⁴ It was in fact not accepted by local Maori.

²⁹¹ Raglan County Engineer to Waikato Valley Authority, 20 February 1978. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #152)

²⁹² Hamilton District Commissioner of Works to Commissioner of Works, 7 March 1978. YCBE a801 1990 Box 146 a 21/20/1 8036, Archives NZ Auckland (supporting papers #153)

²⁹³ Raglan County Engineer to Waikato Valley Authority, 9 March 1978. YCBE a801 1990 Box 146 a 21/20/1 8036, Archives NZ Auckland (supporting papers #154)

²⁹⁴ Hamilton District Commissioner of Works to Department of Health, 9 March 1978. YCBE a801 1990 Box 146 a 21/20/1 8036, Archives NZ Auckland (supporting papers #155)



Figure 8: Photograph of broken discharge pipe

Local residents' concern with the damaged pipe continued. A letter from a Raglan resident to the Minister of Health stated that 'the sewerage plant in Raglan is causing people grave concern'. 'The outlet now is led out to the ocean beach where it is being pumped as a green sludge into the ebbing and incoming tides. I urge you to look into this matter and treat it with the utmost urgency it deserves.' Another resident complained that the outfall was 'pouring a filthy sludge onto swimming and fishing beaches...on the incoming tide and is thus contaminating shellfish beds.' He stated that 'we were assured this would never happen.'²⁹⁵ Other residents organized a petition to the Department of Health stating that it was a 'health hazard.'²⁹⁶ The *Waikato Times* reported on the damage to the outfall pipe and local residents'

²⁹⁵ Jennifer & Garry Gavin to Minister of Health, 16 February 1978. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #156)

²⁹⁶ Undated petition. YCBE a801 1990 Box 102 c 21/20/1 7589, Archives NZ Auckland (supporting papers #157)

frustrations with the County Council.²⁹⁷ Residents also complained to their local MP, Marilyn Waring.²⁹⁸ The costs of relaying a new sewage outfall had pushed the costs of the sewage system out to approximately \$865,000.²⁹⁹

As a result of Tainui objections to the pipeline running through Poihakena to the inner harbour, the RCC approached the Raglan Golf Club which was leasing Te Kopua from the RCC. The pipeline, which became operational in 1977, ran along the Te Kopua subdivision road and through the Raglan Reserve gateway and out to the open sea. When it became apparent that the sewage scheme was going to be put into operation, the elders at the time, Kuru Riki and Herepo Rongo, went down to the lair of Te Atai o Rongo.³⁰⁰ According to Rickard they ‘apologized to him and asked him to help them stop the hara and desecration and [to] protect his land.’ The apologies fell on deaf ears as eight people drowned off the Raglan and Kawhia coast in January 1978 and according to tangata whenua their deaths had resulted from the desecration of Te Rua o Te Atai o Rongo.³⁰¹

Complications with establishing the sewage system arose nearly immediately. A few months after the sewage pipes had been laid, they were lifted out of the seabed because of the friction created by the constant impact of waves in the area. The pipes were thrown onto the beach and created a green lake of sewage in front of the Te Kopua subdivision. Rickard notes that ‘the stench was so disgusting that [Raglan] resident the late Mike Robb complained to the Health Department and [Raglan County] Council was forced to re-site the pipeline at the entrance of the inner harbour.’ The RCC saw no connection between their construction on the

²⁹⁷ ‘Beach erosion cuts sewer line,’ *Waikato Times*, 28 February 1978. YCBE a801 1990 Box 146 a 21/20/1 8036, Archives NZ Auckland

²⁹⁸ Marilyn Waring to Department of Health, 2 March 1978. YCBE a801 1990 Box 146 a 21/20/1 8036, Archives NZ Auckland (supporting papers #158)

²⁹⁹ Raglan County Engineer, ‘Raglan Sewerage Scheme,’ 3 March 1978. YCBE a801 1990 Box 146 a 21/20/1 8036, Archives NZ Auckland (supporting papers #159)

³⁰⁰ Wai 898, #M17, p13

³⁰¹ ‘Statement of James (Tex) Rickard,’ RMA 305/99, p 6

beach to install the pipe and the resulting erosion that occurred that eventually lifted the pipes out of the ground.³⁰²

The Waikato Valley Authority conducted tests from November 1977 to June 1978 on the bacteriological content of Raglan Harbour waters. They reported to the Department of Health that ‘at no time have faecal coliform densities exceeded the commonly accepted standard for primary contact recreation of 200 faecal coliforms per 100 millilitres.’³⁰³ However by 1980 the Auckland Regional Authority had collected shellfish samples to test for faecal coliform counts adjacent to the oxidation ponds and they concluded that the shellfish in the area would be unsuitable for eating.³⁰⁴ Following the expiry of the consent in 1983, the RCC applied to the Waikato Valley Authority for another permit.³⁰⁵

The Authority issued water right No. 840077 to the Raglan County Council for five years from 18 June 1985. It provided the Council with the right to discharge up to 1,000 cubic metres of treated sewage effluent into Raglan Harbour subject to six special conditions:

- (a) The 5 day biochemical oxygen demand of the discharge shall not exceed 150gm cubed and the daily BOD5 load shall not exceed 150kg per day.
- (b) The suspended solids concentration of the discharge shall not exceed 150gm cubed and the daily suspended solids load shall not exceed 150kg per day.
- (c) The treatment system shall be operated and maintained to the satisfaction of the Authority.
- (d) Discharge shall occur only during the period of the ebb (outgoing) tide.
- (e) Easy access shall be provided by the grantee for the collection of pond effluent samples.
- (f) Provision for flow measurement of the discharge shall be installed by the grantee.³⁰⁶

³⁰² ‘Beach erosion cuts sewer line,’ *Waikato Times*, 28 February 1978. YCBE a801 1990 Box 146 a 21/20/1 8036, Archives NZ Auckland; ‘Statement of James (Tex) Rickard,’ RMA 305/99, p 6

³⁰³ Waikato Valley Authority to Department of Health, 21 July 1978. YCBE a801 1990 Box 146 a 21/20/1 8036, Archives NZ Auckland (supporting papers #160)

³⁰⁴ D Ogilvie (Auckland Regional Authority), ‘Your stream & spring – Wainui,’ in ‘Statement of James (Tex) Rickard,’ RMA 305/99, pp 6, 13

³⁰⁵ Wai 898, #A99, p 138

³⁰⁶ Waikato Valley Authority, ‘Water Right No. 840077.’ Waikato Regional Council File 60 66 83A Vol 1 (supporting papers #161)

When a bacteriological survey of bathing beaches in the Waikato catchment was completed in 1984, the four sites at Raglan that were tested did not exceed the limit on any sampled occasions. The samples were taken at the Raglan Harbour Wharf, Manu Bay, Whale Bay and Raglan Ocean Beach (Ngarunui Beach). This contrasted with the samples taken in 1980 by the Auckland Regional Authority at Te Kopua. The difference may have resulted from better piping at the oxidation ponds and the pipe out to sea but it may also have been a result of testing away from the area that the sewage was discharged.³⁰⁷ In 1985 and 1986 there were reports of further problems with the sewage system. In 1985 a pumping station fault resulted in raw sewage leaking into the harbour at Lorenzen Bay. Complaints were made to the Waikato Valley Authority and the Raglan County Council. Residents indicated that it had been a recurring problem but this had been the first time that the Waikato Valley Authority had been informed.³⁰⁸ Then in 1986 the ponds overflowed and caused significant breaks in the structure of one of the oxidation ponds.³⁰⁹

3.2 The development of a second sewage system with the Waikato District Council & Waikato Regional Council, c. 1990s

3.2.1 The WDC application to treat and discharge sewage in Raglan, 1990-1994

In June 1990 the RCC's (soon to be reformed as part of the WDC) water right to discharge sewage expired. The WDC contracted a private firm, Beca Stevens, to report on alternative sewage disposal options. While the report explored some land disposal methods, it recommended urgently acquiring larger pumps, new gravity pipelines and additional treatment capacity. Additionally it also recommended improving the effluent quality long

³⁰⁷ Jill Davis, 'Bacteriological Survey of Bathing Beaches in the Waikato Catchment,' 1984. WRC Archives (supporting papers #162)

³⁰⁸ Raglan resident Kerry Witchell commented, 'the effluent from [the] septic tanks was treated. This is raw sewage. Residents have a paid a lot of money for nothing, the system is inadequate.' He blamed the Raglan County Council head office in Ngaruawahia rather than local county staff at Raglan who were trying their best to maintain the system. 'Sewage spill concerns,' *The Waikato Times*, 30 January 1985

³⁰⁹ JK Wright to WRC, 30 July 1996. Waikato Regional Council File 60 66 83A Vol 4 (supporting papers #163)

term by using wetlands and UV disinfection.³¹⁰ In November 1990 the WDC applied to the WRC under the provisions of the Water and Soil Conservation Act 1967 to renew a water right to discharge up to 3,400 cubic metres of treated domestic wastewater per day into the vicinity of Wainamu Beach, Raglan. When the WDC discussed the upcoming application for a water right for the sewerage system, Councillor Hope ‘expressed his concern that the system disposed of effluent to the sea.’ ‘He believed that, as an Environmental Committee, members had a responsibility to care for the environment and it was his opinion that the subject should be discussed by the Committee. It was his view that Council should bring pressure on the Government to provide subsidies for the development of land-based effluent disposal systems.’³¹¹ The application was publicly notified and submissions were received in opposition from the Minister of Conservation, Tuaiwa Eva Rickard and Angeline Greensill. After the deadline for submissions the Green Scene environmental group also provided a submission in opposition.³¹² The Minister of Conservation’s objections were based on protecting the ecological, recreational and visual values which could be adversely affected by the proposed water right.³¹³

Greensill’s objection was written on behalf of the Whaingaroa Ki te Whenua Trust.

She wrote that the water right should be refused for a number of different reasons:

No environmental impact report has been done. Discharging human waste into the sea is abhorrent and in conflict with Maori values. The Raglan County Council (now under Waikato District Council) did not adhere to the original Water Right conditions and ignored advice from local Maori people [regarding] the siting of the Oxidation Ponds in the vicinity of Te Rua o Te

³¹⁰ Beca Stevens, ‘Raglan Sewerage Facilities,’ November 1990. WDC Raglan Archive Steve Soanes Collection (supporting papers #164)

³¹¹ WDC District Secretary, ‘Raglan Water Right,’ 21 November 1990. Waikato District Council (Ngaruawahia) File 55 06 17 Vol 1 (supporting papers #165)

³¹² Kiri Speirs to WDC CEO, 28 January 1993. Waikato Regional Council File 60 66 83A Vol 1 (supporting papers #166)

³¹³ ‘Statement of objection by the Minister of Conservation,’ 26 February 1991. Waikato Regional Council File 60 66 83A Vol 1 (supporting papers #167)

Ata. There are more suitable options available for disposing of sewage in Raglan than into the ocean.³¹⁴

Rickard's objection was written on behalf of the Tainui Awhiro Trust (Tainui Awhiro Tribal Trust 438). Rickard pointed out that the reasons for the Trust's objections were the same concerns that had been addressed to the Raglan County Council by the Tainui Maori Committee back in November 1975. These were 'the siting of the oxidation Ponds, siting of the sewage outfall into the Whaingaroa Harbour, [and] the siting of the pumping station by the Poihakena Burial Grounds.' In addition Rickard had four additional objections, 'siting the pumping station beside the Rakaunui Urupa [is] totally insensitive, as a Treaty partner to the Crown and all its agencies, the Crown has a responsibility to give effect to the Treaty of Waitangi, there are alternative methods for effluent disposal, polluting the sea with human effluent is culturally and spiritually unacceptable.'³¹⁵ Both Rickard and Greensill were informed by the WRC that their objections had been received and if the issue made it to the Planning Tribunal they would be informed and have the right to be heard.

In early June 1991 Greensill contacted the WRC office to report a sewage discharge that was released on the incoming tides rather than the outgoing tides. She complained that sewage discharge on an incoming tide was occurring repeatedly and asked for monitoring and enforcement of the conditions of the water right by the WRC. Greensill also enquired about the status of her water right objection that had been submitted in February 1991.³¹⁶ A WRC official met Greensill not long after receiving the complaint to discuss the negative effects of the discharge on shellfish quality. The WDC logs showed that there had been no discharge at the time that Greensill had complained the previous week but the system had been known to have malfunctioned previously. A letter from the WRC to the WDC noted that 'there are

³¹⁴ Angeline Greensill to Waikato Regional Council, 25 February 1991. Waikato Regional Council File 60 66 83A Vol 1 (supporting papers #168)

³¹⁵ Tuaiwa Eva Rickard to Waikato Regional Council, 25 February 1991. Waikato Regional Council File 60 66 83A Vol 1 (supporting papers #169)

³¹⁶ Colin Ferguson, 'Complaint: Re: Sewage discharge Raglan Harbour,' undated. Waikato Regional Council File 60 66 83A Vol 1 (supporting papers #170)

infrequent problems with the timing of the discharge with respect to the outgoing tide. This problem is to be addressed by some changes to the transducer program setting.³¹⁷ Other possible sources of the discharge were from the leaking oxidation ponds as well as seepage from the rubbish tip further up the hill that connected to the Wainui Stream. The WRC official was sceptical of some of Greensill's complaints commenting in a memorandum that 'seepage from the ponds was affecting their shellfish beds, [since] the ponds were built on a swamp, they say.' (emphasis in original) He also claimed that 'they state Maori generally accept discharge to surface water if [the] fishing and shellfish quality [is] not impaired.'³¹⁸ This was incorrect as Rickard and Greensill had both indicated in their objections to the water right that the discharge of human waste to the ocean was unacceptable because it was contrary to Maori values and concerns.

As a result of the discrepancy between Greensill's complaints and the WDC's own records the WRC recommended that when Greensill next observed sewage overflow she should immediately contact WRC. On 23 July 1991 another complaint was received and the WRC confirmed in a letter to the WDC that storm water entering the system even during the low winter period was at a severe level. The WRC indicated that upgrades needed to be made so that sewage was not released at incorrect times and the pump capacity for the oxidation ponds needed to be increased.³¹⁹ WDC and WRC representatives met with Tex Rickard and other representatives of Tainui Awhiro at the oxidation ponds on 19 August 1991 to discuss the overflows. While the comments of Rickard and others were not noted in the memorandum written by the WRC official after the meeting, the group agreed that the ponds were discharging very close to low tide and that a flow meter needed to be installed by the

³¹⁷ WRC to WDC, 13 June 1991. Waikato Regional Council File 60 66 83A Vol 1 (supporting papers #171)

³¹⁸ D Stagg, 'Comments on Raglan Beca Stevens report,' 12 June 1991. Waikato Regional Council File 60 66 83A Vol 1 (supporting papers #172)

³¹⁹ WRC to WDC, 31 July 1991. Waikato Regional Council File 60 66 83A Vol 1 (supporting papers #173)

WDC.³²⁰ In a later memorandum the WRC official noted that consultation with ‘Maoris’ regarding the shellfish beds in the vicinity was necessary as well as an investigation into seepage from the oxidation ponds next to the shellfish beds.³²¹ Around the same time in the early 1990s, a drain blocked on the southeastern side of one of the oxidation ponds and water was running into the pond and eating away at the bank, resulting in flooding. After complaints by Tainui to both the WDC and WRC, it took 12 months for the Council to fix the problem. The 12 month delay had been unreasonable in the eyes of tangata whenua.³²²

The WRC wrote to the WDC in July 1992 that its right to discharge sewage had expired in June 1990. An application had been received from the WDC in November 1990 and after receiving objections, a consultant was meant to be engaged by WDC to answer the questions raised in the objections. The WRC informed the WDC that they had no legal authorization to discharge sewage and that the penalties under the Resource Management Act 1991 were considerable. The WRC had not received any progress updates regarding the consultant’s report and it advised the WDC to urgently provide the necessary information to WRC or else the WDC’s application to discharge would be declined outright.³²³ The report was only received by the WRC nearly five months later, in November 1992. The hearing was finally held nearly three years after the application was first received from the WDC. One of the major factors in the delay was what the Department of Conservation, WRC and WDC referred to as a ‘lack of information’ on how to assess what the effects of the discharge were on the environment.³²⁴

³²⁰ David Stagg, ‘Raglan sewage oxidation ponds,’ 19 August 1991. Waikato Regional Council File 60 66 83A Vol 1 (supporting papers #174)

³²¹ Stagg, ‘Raglan Sewage,’ undated. Waikato Regional Council File 60 66 83A Vol 1 (supporting papers #175)

³²² ‘Statement of James (Tex) Rickard, RMA 305/99, p 7

³²³ Consents Manager (RJ Matthews) to WDC CEO, 14 July 1992. Waikato Regional Council File 60 66 83A Vol 1 (supporting papers #176)

³²⁴ Consents Manager (RJ Matthews) to Tuaiwa Eva Rickard, 6 July 1993. Waikato Regional Council File 60 66 83A Vol 1 (supporting papers #177)

In August 1993 the WRC's Restricted Coastal Activities Hearings Committee held its hearing regarding the sewage scheme. Tuaiwa Eva Rickard and Angeline Greensill both made submissions to the Committee. While Greensill's submission was somewhat technical, Rickard's was more passionate and reflected the decades of struggle which Rickard had endured with local authorities at Raglan.

E nga rangatira kua hui mai nei ki te whiri whiri inga kaupapa o te ra tena koutou tena koutou tena koutou. Haere mai ki te korero mehemea ka whaka ae matou ki nga paru o koutou kainga kia tuku ngia atu e koutou ki roto i te moana o Whaingaroa, ki te hoenga waka aku tupuna matua mete hoenga waka onga uri whakatupu. Me korero tatou. Leaders who have assembled here to discuss the topic of this day welcome, welcome welcome. [We have] come to talk about the discharge of effluent into the sea of my ancestors, the place where they paddled their canoes in those times and today, it is a place where their descendants still row their canoes. Hopefully with courage and determination into year 2000 so that we can walk into the future heads held up high that we the parents did try to stop the pollution of our sacred places.

Gentlemen of the Council and whatever organisation is represented here Welcome. I did not come to beg neither did I come to plead. I have lived within the confines of your laws to a certain degree. I have grown old trying to make your schemes fit into my people's dreams. Some of you know too well the struggles I have had with the Councils. I have enclosed a copy of submissions made to the Raglan County Council in 1974. 19 years ago all the submissions were disallowed [with] no reason given, but while you are in control of my people's land then it is easy for the controlling powers to make decisions.

My daughter Ngahina Angeline Greensill has done a report for your council, she is a diplomat, not like her mother, she speaks your language, and can be quite an adversary if she has to. As for me I am too Maori to see the other side.

The objections I put in in 1974 still stands but there is one historical fact that is on our side now, while we pleaded with the Raglan County Council, the Waikato Valley Authority and the Water Resource council those many years ago now the sun is shining on our people in that OUR LAND HAS BEEN RETURNED whereas the land [previously] was vested in the Council, that is no longer the case, it is now Maori Land. I am going to wait and see if the Government is going to pass an act to take our land again for your sewage system. Then we will go to War again. (emphasis in original)

That then gentlemen is the alternative. You find an alternative for your sewage scheme. Polluting the Harbour of Whaingaroa is not on, you can try and convince me that treated effluent going into the Harbour is harmless, I am not thick.

In conclusion gentlemen, your sewage does not come across Te Kopua the ancestral land of my people.³²⁵

Angeline Greensill's submissions addressed in detail the grounds for her objection: the effects on the ecology of the estuarine area (raised faecal coliform counts), the lack of wind tests for the oxidation ponds and dye tests to track the effluent plume, the lack of subsoil bore tests to determine what kind of seepage is occurring from the oxidation ponds and inadequate standards for monitoring water quality.³²⁶ Greensill attempted to put her frustration into terms which the WRC panel could comprehend. 'Imagine every time you go to your fridge someone has deposited human waste (shit) there, hence you shut the door and rather than eat that food either go without or buy food and store it elsewhere. This is exactly what has happened to us. Our food cupboard has been polluted, despoiled and so we have to buy kaimoana elsewhere.' Greensill also stated that her objection was grounded in the lack of alternative options considered by the WDC, especially land-based disposal methods.

Greensill then made wider comments about the nature of local government and the lack of Maori representation which had hindered the development of an adequate sewage system that was acceptable to all of Raglan's residents.

I am aware that the Council must take into account the Treaty of Waitangi, Kaitiakitanga and our relationship with our ancestral lands. Perhaps this is not the best forum to raise this issue but as far as the Treaty of Waitangi goes my question is, if we are partners and we are going to take into account the principles of the treaty, then how is it that you are sitting up there and we who have Manawhenua status representing tangata whenua are sitting here. Why do we in the spirit of true partnership not have equal representation to hear this application, and have some say in the decisionmaking with you the surrogate representatives of the Crown.

³²⁵ Tuaiwi Eva Rickard, 'Untitled Submission,' undated. Waikato Regional Council File 60 66 83A Vol 1 (supporting papers #178)

³²⁶ Greensill characterized the oxidation pond without aeration as 'nothing more than glorified settling ponds discharging untreated effluent into our harbour'. She also commented regarding the lack of subsoil bore tests that 'when the ponds were being formed the bulldozer had great difficulty filling the hole which kept appearing in the pond. Kaumatua have told me that Te Rua o Te Ata was like a bottomless pit. You couldn't see the bottom, and a large part of the area [was] swampy, hardly a good foundation for a pond of this type.'

She urged the WRC to take action and use its wider powers under the RMA to force the WDC to develop an environmentally appropriate option for sewage disposal. The concerns with the affordability of a new system would come up more prominently later in the 1990s and early 2000s in discussions of a land-based disposal system but Greensill had the foresight to know that financial considerations would play a part in the WRC's future decisions. 'The penalty for contravening the act by discharging sewage for nearly 3 years without a permit could in fact be used to pay for a new system. We object to this application and support a landbased system in keeping with our own values.'³²⁷

After the hearing a report was released by the WRC which recommended that the water right be granted on the basis that the discharges were not harming the harbour environment and that land-based options for disposal be investigated.³²⁸ This report became the subject of two requests for a hearing by the Planning Tribunal from Rickard and Greensill. While Greensill admitted that she could accept much of the report, there was still no recommendation to decommission the oxidation pond located on the taniwha den, Te Atai o Rongo.³²⁹ Both appellants were supported in a letter from the Huakina Development Trust to the Planning Tribunal.³³⁰ In December 1993 a memorandum of agreement was signed between the two appellants (Rickard and Greensill), the WDC, the WRC and DoC to allow the water right by including a condition to investigate alternative options for the disposal of Raglan wastewater within one year and within three years to begin trials to test alternative

³²⁷ Angeline Greensill, 'Submission,' Undated. Waikato Regional Council File 60 66 83A Vol 1; 'Objectors flock to Raglan talks,' *Waikato Times*, 6 August 1993. Waikato Regional Council File 60 66 83A Vol 2 (supporting papers #179)

³²⁸ WRC, 'Report and recommendations of the Waikato Regional Council Restricted Coastal Activity Committee,' 26 August 1993. Waikato Regional Council File 60 66 83A Vol 2 (supporting papers #180)

³²⁹ Tuaiwa Eva Rickard and Angeline Greensill Notices of Appeal, 18 September 1993. Waikato Regional Council File 60 66 83A Vol 2 (supporting papers #181)

³³⁰ 'Raglan sewage case taken up,' *Waikato Times*, undated; Carmen Kirkwood to Planning Tribunal, 14 September 1993: Waikato Regional Council File 60 66 83A Vol 2 (supporting papers #182)

options.³³¹ The agreement resulted in the establishment of the Raglan Sewerage Consultative Group, which was to consist of half representatives from WDC and WRC and half representatives from tangata whenua. A main concern of Rickard and Greensill was that the existing oxidation ponds should be allowed to revert to wetland, as they were built on the site of a taniwha den, that of Te Atai o Rongo.³³² The establishment of the Group was evidence that there had been a gradual improvement in the consultative process that was now including Maori to a greater extent than during the 1970s when the sewerage system was first developed. The Group was a purely consultative group that made recommendations to the WDC and WRC for the proposed upgrade to the sewerage system.

The Waikato District Council was granted a coastal permit (WRC 900358) for the discharge of 2,600 cubic metres of sewage from the Raglan oxidation ponds by the Minister of Conservation on 14 February 1994 for a term that expired on 31 August 1998. Originally the WDC had asked for a consent term of 35 years. Generally the conditions of the consent were to monitor the effluent quality, undertake an environmental monitoring programme to determine the potential impact of this discharge on public health by considering the effects of sewage on edible shellfish and recreational swimming, and investigate alternative options for the disposal of the Raglan township effluent.³³³ These conditions were not developed in concert with the Maori objectors and were not designed to assuage Maori concerns as future resource consents would be. The specific conditions were as follows:

³³¹ In late 1993 an environmental group in Raglan complained to the Parliamentary Commissioner for the Environment about the delays in progressing the update to the Raglan Sewerage system. The Commissioner wrote to the WDC requesting an explanation. The WDC's answers placated the Commissioner. Office of the Parliamentary Commissioner for the Environment to WDC Manager, 14 December 1993. Waikato District Council (Ngaruawahia) File 55 06 17 Vol 1 (supporting papers #183)

³³² Planning Tribunal, 'Report of the Planning Tribunal: Decision No. C5/94'; 'Agreement between Tainui Awhiro and the Waikato District Council,' 10 December 1993: Waikato Regional Council File 60 66 83A Vol 2 (supporting papers #184)

³³³ 'Coastal Permit 900358.' Waikato Regional Council File 60 66 83A Vol 2 (supporting papers #185)

Figure 9: Table of conditions of consent 900358

Condition	Description
(a)	There shall be no discharge of oil or grease as a result of the exercise of this permit.
(b)	The grantee shall ensure that by 1 March 1994 there is no discharge of non decomposable solids as a result of the exercise of this permit.
(c)	The grantee shall be responsible for the structural integrity of the sewage outfall line and shall ensure that it is maintained in an operational condition at all times.
(d)	The instantaneous discharge rate shall not exceed 90 litres per second.
(e)	This permit shall only be exercised on an outgoing tide. The discharge may be started no sooner than half an hour after the tide begins to ebb and shall stop a minimum of one and a half hours prior to the tide ceasing to ebb.
(f)	WDC to maintain a record of treatment system operations that would address the reasoning and frequency of pond, pump and pumping station maintenance; the occurrences and reasons for overflows; a daily record of the total volume of effluent discharged; and any operational issues with the treatment ponds. The WDC to supply this information to the Waikato Regional Council at six monthly intervals
(g)	The WDC to retain <u>appropriately experienced</u> persons to develop an environmental monitoring programme to determine the potential impact of this discharge on public health.’ The programme was to be written within six months from the date of granting of the permit and would include reference to the effect of the discharge on edible shellfish and swimmers as well as their report procedures. (emphasis in original)
(h)	The WDC to provide results from their monitoring programme to the WRC at regular intervals.
(i)	WDC should investigate alternative options for the disposal of Raglan township effluent and report to the WRC within one year of the granting of the permit on the options investigated and reason a particular option was chosen. Within three years of the granting of the permit a trial would be undertaken to investigate the feasibility of the option chosen. Then the WDC was meant to complete at annual intervals on upgrades to the treatment plant and their effects on the discharge.
(j)	The WRC would have the opportunity to review the conditions of the permit every six months to deal with any adverse effects on the environment arising from the exercise of the permit.
(k)	Stormwater runoff should be prevented from the entering the pond system by the construction of a cutoff drain.
(l)	The concentration of BOD5 of the discharge should not exceed 50 grams per cubic metre.
Addendum	‘The objective of these conditions was for the District Council to take immediate steps to upgrade and maintain components of the Raglan sewage system as it presently operates, in particular in respect of the oxidation ponds. All parties represented in the hearings concerning this application have agreed and it was accepted by the Planning Tribunal, that it would not be within my powers to impose these conditions in granting the coastal permit for the piped discharge itself.’

By 1994 the effects of the untreated sewage and the steady agricultural run-off from further up in the Whaingaroa catchment were beginning to have a serious effect on the

environmental health of the Harbour mouth. Fred Lichtwark, a fisheries inspector and Raglan resident, began to be involved in environmental management issues at Raglan Harbour in the early to mid 1990s. He wrote a discussion document to bring the Waikato District Council and Waikato Regional Council's attention to their responsibilities under the Resource Management Act 1991 and the Reserves Act 1977 for the protection of the marine environment contained within Raglan Harbour. Lichtwark noted the increased faecal coliform count of the Harbour water. In 1991 the bacterial quality of the harbour water was described as good with a faecal coliform count of less than one per 100 mL. By 1994 the bacterial quality of the Harbour water was described as bad and a health hazard with a faecal coliform count of 700 per 100 mL while the upper reaches of the Harbour had a faecal coliform count of 2400 per 100 mL. For bathing the faecal coliform count should not exceed 200 faecal coliforms per 100 mL. In shellfish the faecal coliform content fit for human consumption should not exceed 230 per 100 g of flesh. A 1994 report found a faecal coliform count of 24,000 contained in oyster flesh which posed an extreme health risk. Lichtwark reported that 'local Maori have indicated a loss of 70% of their kaimoana', a figure that had been backed by the Department of Conservation.³³⁴ Despite the conditions imposed by the new consent, water quality had deteriorated significantly.

In mid-1995 Waikato's Community Health organisation released a press statement warning that there was an element of risk associated with consuming shellfish from Raglan Harbour following periods of rainfall. A survey found that one quarter of shellfish samples taken from Whaingaroa Harbour were contaminated although all the shellfish were taken following periods of rainfall. Health Protection Officer recommended allowing at least five days following rainfall to allow shellfish to self-cleanse. The shellfish were contaminated by a high level of faecal coliforms, a bacterium from human and animal faeces that can get into

³³⁴ 'Waikato envirolab test results,' 28 November 1994; Fred Lichtwark, 'Raglan Harbour,' 1995: WDC Ngaruawahia Archives Raglan Harbour 94-99 (supporting papers #186)

the shellfish through the rainfall and subsequent run-off from farmland. Shellfish are filter feeders and they concentrate bacteria when water is contaminated.³³⁵ Raglan Community groups were concerned about the health issues related to wastewater at Raglan and the effects on the contamination of shellfish and other marine species just as much as Maori groups in Whaingaroa.³³⁶

3.2.2 The proposed purchasing of Maori land for the new treatment system, 1995-1996

On 4 April 1995 a WDC representative met with Sid Tuteao, the Chairman of the owners of the Rakaunui block, to discuss the potential acquisition of land for the new sewerage scheme. Tuteao commented that ‘two issues need to be addressed: Koning’s lease (recently renewed for 10 years) [and] the opinions of the owners need to be canvassed.’ ‘Mr Tuteao said that his father had told him about the taniwha which lived in the former creek beside Wainui Road. (under north western part of No 2 pond) [He] would like area developed with trees (as per landscape concept) [but] probably not interested in selling but [a] lease may be considered.’ Tuteao thought that ‘6 ha (12 acres) sounded like a lot of land’ and he asked ‘why did Eva [Rickard] not offer her land?’ The WDC representative stated that the plan was to convert the ponds to wetlands and that approximately 6 hectares was required. The new ponds would not be rectangular but would be shaped to fit the landscape. Koning was aware of the proposal and supported it. A sale or long-term lease was required. The alternative was put all of the new plant on the property of a non-Maori resident of Raglan who was concerned that too much of his farm would be taken. A meeting of the Maori owners of

³³⁵ Wai 898, #A99, pp 170-171; Community Health, ‘Warning for Raglan Shellfish Fans,’ and DA Cumming, Untitled Memorandum, 19 January 1995: Waikato Regional Council File 60 66 83Z Vol 1 (supporting papers #187)

³³⁶ Karen Rowe and others, ‘Raglan by the Sea: Raglan Community Assessment,’ 1995, WDC Raglan Steve Soanes Archives (supporting papers #188)

Rakaunui would be arranged and a WDC representative would attend to explain the proposal.³³⁷

At the April 1995 meeting of the RSCG the WDC reported on progress with the purchase of Maori land at Rakaunui:

Difficulties were being experienced in locating owners of the Rakaunui Block and arranging a meeting to obtain agreement from 75% of the owners. The Trust administering the land had indicated that they were in favour of the sale. The Trust were not interested in leasing the land to the Council. The agreement for the purchase of the Dando land was about to be signed. Mrs [Eva] Rickard advised the Group that she would vigorously contest the sale of Rakaunui Block.³³⁸

At a meeting with Tuteao three months later in June 1995 the WDC provided further details of the draft lease proposal. Tuteao stated that he would consider the ‘option of sale to [the] Council for a sum which would allow [the] trustees to purchase a house for rental. [The] sale [its] present value (estimated at \$58,000) would not be enough.’ The WDC representative replied that ‘for roading works, Council generally pays LV + 10-20%, but [it] may be negotiable.’³³⁹ At the following meeting in late June 1995 Tuteao stated that he ‘would like to see an offer to buy as well as lease so that options can be assessed’. He suggested that \$125,000 would be suitable. He commented that a ‘lump purchase which can be used is better for owners than [a] ‘peanuts’ lease payment every year.’ Tuteao ‘would consider delayed payment on any purchase given that Council must work to a budget.’ He had ‘attended a

³³⁷ Mike Safey, ‘Meeting with Mr Sid Tuteao...,’ 4 April 1995. Waikato District Council (Ngaruawahia) File 55 06 17 Vol 2 (supporting papers #189)

³³⁸ ‘Minutes of a Meeting of the RSCG,’ 3 April 1995. Waikato District Council (Ngaruawahia) File 55 06 17 Vol 2 (supporting papers #190)

³³⁹ Mike Safey, ‘Meeting with Mr Sid Tuteao...,’ 8 June 1995. Waikato District Council (Ngaruawahia) File 55 06 17 Vol 2 (supporting papers #191)

meeting at which Eva Rickard spoke about the matter of sewage treatment.’ The WDC representative replied that he had believed that purchasing was not an option.³⁴⁰

In an internal report the WDC stated that ‘negotiations are proceeding satisfactorily with landowners to acquire land for the proposed upgrading works.’ ‘It is intended that Council purchase approximately 9 hectares and lease a further 6 hectares for a minimum period of 100 years....Discussions have been somewhat protracted due to multiple ownerships and an existing lease agreement on part of the site. It is now anticipated that agreements with the affected landowners will be finalised in early July.’³⁴¹

The WDC employed professional property managers to negotiate and arrange the purchase of the land needed for the new sewerage site. They reported to the WDC on their progress:

[The Rakaunui block] is owned by a group of local Maori, with control vested in a Trust Board. Council requires 6ha of this property. Negotiations with the Chairman of this Trust Board have extended over the past two months. Our first approach to the Chairman of Trustees, Mr Sid Tuteao, was on the basis of outright purchase of the 6ha block. The Trust was a reluctant vendor but would consider a sale if the proceeds resulted in a ‘good income for the Trust.’ We offered the Trust the option of obtaining their own valuation, at the Council’s expense, but this offer was declined. The Trust did not believe the market value of the land was the relevant issue here. During negotiations the Trust identified a sale price of \$125,000. This figure bears no relationship to the land’s market value and has proved non-negotiable. Subsequently we have explored other options with the Trust. We considered a possible land swap and looked around the immediate neighbourhood for suitable land with which to trade. We have been unable to find anything suitable, or to the Trust’s satisfaction. We approached the District Council directly as to any surplus land that they may have available in the area, and consequently have pursued a deal involving the nearby Raglan land fill site situated on Te Hutewai Road. The Trust has now confirmed that the land fill site as a swap was not acceptable as it did not provide the income stream they are anticipating from

³⁴⁰ Mike Safety, ‘Meeting with Mr Sid Tuteao...’, 27 June 1995. Waikato District Council (Ngaruawahia) File 55 06 17 Vol 2 (supporting papers #192)

³⁴¹ WDC Manager Engineering Services to WDC Engineering Committee, 23 June 1995. Waikato District Council (Ngaruawahia) File 55 06 17 Vol 2 (supporting papers #193)

this deal. We have also explored the prospect of a leasing arrangement with the Trust. (This had already been explored by the Council). The Trust has now indicated it will not consider a lease at any rental, and confirmed that the only deal it will consider is outright sale of the land at the price specified. We met with Sid Tuteao yesterday to finalise negotiations, and to commit a firm price to paper. Attached is a sale and purchase agreement at \$125,000, which Mr Tuteao is prepared to put to the Trustees for consideration. He requires the District Council to confirm that this price will be agreed before he takes it to his fellow Trustees for signature.³⁴²

³⁴² Knight Frank (NZ) Limited Property Services Manager to WDC General Manager, 3 September 1995. Waikato District Council (Ngaruawahia) File 55 06 17 Vol 2 (supporting papers #194)

\$125,000.³⁴³ The Council moved that the land be purchased but Councillors Benson and Gallagher requested that their votes be recorded against the resolution.³⁴⁴

While the author has been unable to find any documents in the WDC's Archives regarding the result of the negotiations, Verna Tuteao's brief of evidence reveals that the Tuhoea Wahanga Trust that manages the land rejected the Crown's offers:

The pros and cons were discussed at a Trustee meeting held on 27 April 1996. The prospect of a sale was attractive as a means to develop one of the few remaining and most prominent Wetini Mahikai land holdings, but concern over the ponds was still high, especially amongst resident whanau. The spectre of Riki's Spring also raised its head, proving that distrust in the Council was still high. If a sale was going to be approved, the trustees wanted these matters resolved. After canvassing the owners' position, it was well short of the 75 per cent threshold. The decision against the sale was confirmed at the trustee meeting in June 1996.³⁴⁵

3.2.3 The Raglan Sewerage Consultative Group, 1994-1997

In early 1994 the Raglan Sewerage Consultative Group (RSCG) was established to identify and evaluate the feasibility of alternative options for treatment and disposal systems.³⁴⁶ Soon after the consent was issued, Angeline Greensill sent a letter to the WDC complaining about the lack of communication between the WDC and tangata whenua. The RSCG had been established but months elapsed without any contact:

I write to express concern at a number of issues which have arisen since I signed an agreement to work with District Council to find a solution to the sewage problem that has affected the tangata whenua and their environment in Whaingaroa/Raglan for the past 20 years. Firstly I expected at least an acknowledgment of letters I sent to Council in December and February. I have always received minutes and acknowledgments from the Planning section and the Wainui Reserve Committee so I presume there is some procedure or policy regarding this matter and I would appreciate a copy at your earliest

³⁴³ WDC Manager Engineering Services to WDC, 15 September 1995, Waikato District Council (Ngaruawahia) File 55 06 17 Vol 2 (supporting papers #195)

³⁴⁴ WDC District Secretary to WDC Manager Engineering Services, 2 October 1995. Waikato District Council (Ngaruawahia) File 55 06 17 Vol 2 (supporting papers #196)

³⁴⁵ Wai 898, #M17, pp 12-13

³⁴⁶ Planning Tribunal, 'Report of the Planning Tribunal: Decision No. C5/94'; 'Agreement between Tainui Awhiro and the Waikato District Council,' 10 December 1993: Waikato Regional Council File 60 66 83A Vol 2 (supporting papers #197)

convenience. Secondly I take exception to the attitudes of some of your councillors who make public statements and assumptions which I consider libellous about our committee members and their motives. Attempts made by our people 20 years ago to make the then Raglan County Council consider alternatives to the current system fell on deaf ears and hence we now have a situation which requires us to once again try to work together to find an environmentally friendly solution before the year 2000. The price will not be cheap economically (in money terms) but that is the price Council must accept for making bad decisions. The ratepayers of Raglan didn't choose a wahi tapu in an estuarine area for the oxidation ponds, Councillors did not listen to the tangata whenua. Thirdly there appears to be some reluctance about approving a reasonable budget to allow this committee to fulfil its objectives i.e. to monitor the existing system and to investigate alternative sewage treatment and disposal systems with a view to ending the current harbour discharge of sewage effluent. At the inaugural meeting of our committee I offered to work with Ray Firth in coming up with a realistic budget for this committee. However I am now of the opinion that the whole committee should have an input, even though I would have expected Council to have already taken the initiative and begun budgeting for expected expenditure on this major capital works item to satisfy Resource Management Act requirements which will surely arrive in the next 5 years if not sooner. I am conscious of the fact that nearly three months have elapsed since we signed the contract to work together. I have spoken to Tom Moana co-chairperson of our Consultative Committee and the NgatiTahinga representative for the Tainui Trust Board about my concerns and the need to meet to resolve these issues with yourself and the General Manager Warwick Bennett. A Monday or Friday afternoon preferably after 1.00 would be suitable for tangata whenua representatives and our advisor Chris Webster.³⁴⁷

The WDC General Manager responded to Greensill in late March 1994 that an April meeting would suit the WDC and its representatives.³⁴⁸

Some of the proposed options for the system and the rationale for the consultative group were commented upon in a memorandum from the WDC to the RSCG:

The reticulation comprises gravity collector sewers in each valley catchment area and a chain of pump stations along the foreshore transferring sewage to the next valley and ultimately to the treatment system. Treatment is by two

³⁴⁷ Angeline Greensill to WDC Mayor, 10 February 1994. Waikato District Council (Ngaruawahia) File 55 06 17 Vol 2 (supporting papers #198)

³⁴⁸ WDC General Manager to Greensill, 28 March 1994. Waikato District Council (Ngaruawahia) File 55 06 17 Vol 2 (supporting papers #199)

stage oxidation pond systems which utilises algae and bacteria to purify the raw sewage by decomposition of complex organic material into simple nutrients and disinfect it by long detention time and exposure to sunlight...20 years ago little concern was given to other than technical issues, and the [WRC] Hearings Committee at the recent resource consent hearing commented that the concerns expressed by tangatawhenua 20 years ago had not been adequately addressed and were therefore still relevant for meaningful consideration. Addressing such cultural and spiritual matters in a comprehensive way is therefore a major function of the present consultative committee.³⁴⁹

The RSCG consisted of P Barber, Olive Gallagher, Angeline Greensill, R Matenga, W Morris, Bill Tukiri, Rod Wise and Tom Moana. Ray Firth, Mike Safety and G Dean were the WDC staff present.

At the June 1994 meeting of the RSCG the tangata whenua representatives contested a number of statements in the Beca Stevens report. 'The statement in the report that treated water could go into any receiving water was not true as far as Tainui were concerned. It was the opinion of some members of the Group that insufficient testing of effluent at the harbour outlet had been carried out as some areas which the tangata whenua had requested to be tested had not been tested. The Group did not agree with a combined system of discharge, ie a land based system of discharge during the summer and a harbour discharge during the winter. As far as the tangata whenua were concerned, a land based system was the only alternative in view of the custom that what comes from the land must go back to the land.'³⁵⁰

The WDC's proposed upgrade of the Raglan sewerage facilities included the purchase of Maori land. The WDC Manager of Engineering and Works commented that 'it is important that we have a document that will be accepted by the Tangata Whenua and ourselves as we have previously experienced problems with landowners in this area. It may not be possible to

³⁴⁹ WDC Technical Services Group to Raglan Sewerage Consultative Group, 25 February 1994. Waikato District Council (Ngaruawahia) File 55 06 17 Vol 0 (supporting papers #200)

³⁵⁰ 'Minutes of a Meeting of the RSCG,' 7 June 1994. Waikato District Council (Ngaruawahia) File 55 06 17 Vol 2 (supporting papers #201)

make contact with all the landowners and we will need to make a judgement on this so we avoid holding up the workshops too long.³⁵¹

A private company, Environmental Management Services Limited, were contracted by the WDC to conduct the consultations necessary under the Resource Management Act. In September 1994 Angeline Greensill met with the company. She repeated her opposition to the location of the oxidation ponds over top of the lair of Te Atai o Rongo and the discharge of sewage into the harbour. She stated that Ministry of Works and Development engineers had advised in 1973 that a site near the dump was available for oxidation ponds.³⁵²

At the sixth meeting of the Raglan Sewerage Consultative Group (RSCG) in August 1994 a Pakeha resident of Raglan, Steve Hart, provided information about the use of permaculture methods to recycle the sewage. He was asked to provide a costing estimate for the proposed system for the RSCG.³⁵³ This had the support of tangata whenua because it was entirely land based. NIWA had developed a land-based disposal option at the Wainui Reserve.³⁵⁴ The RSCG was also exploring a wetland concept which would allow for substantial filtration of the wastewater before the treated waste was discharged directly to the sea, but as Mark Henry of the WRC pointed out when reviewing the concept internally ‘the system still incorporates a direct discharge to surface waters, which is seen as contrary to the concerns of Tangata Whenua.’³⁵⁵ In February 1995 NIWA published a report on the Raglan Wastewater Treatment option of a wetland system with eventual discharge into the harbour. While this would not have met the approval of tangata whenua, the report stated that

³⁵¹ WDC Manager Engineering and Works to Mike Safey, 14 March 1995. Waikato District Council (Ngaruawahia) File 55 06 17 Vol 2 (supporting papers #202)

³⁵² Environmental Management Services Limited, ‘Meeting with Angeline,’ 21 September 1994, Waikato District Council (Ngaruawahia) File 55 06 17 Vol 5

³⁵³ ‘Minutes of a Meeting of the RSCG,’ 2 August 1994. Waikato Regional Council File 60 66 83A Vol 4 (supporting papers #203)

³⁵⁴ NIWA, ‘Preliminary Investigations for Wastewater Treatment, Raglan,’ October 1994. WDC Raglan Steve Soanes Archives (supporting papers #204)

³⁵⁵ Mark Henry to David Pearks, 15 December 1994. Waikato Regional Council File 60 66 83A Vol 4 (supporting papers #205)

consideration would need to be given to ‘recognising Maori cultural issues and environmental principles’.³⁵⁶ Despite this opposition from tangata whenua the WDC claimed in February 1995 that the RSCG had recommended to the Raglan Community Board that a wetland system should be proposed and that resource consents would be applied for by July 1996.³⁵⁷

The Raglan Sewerage Consultative Group sought out the opinions and concerns of a variety of local Raglan groups in addition to tangata whenua. The Consultative Group favoured using a wetland system in which the sewage would be treated to a high standard and then released into Raglan Harbour. While Whaingaroa Harbour Care thought the system to be better than that being used at the time they nonetheless felt that the wetland system did not meet ‘Iwi concerns’ and they did not believe that a wetland system would adequately treat nitrates found in human and animal wastes.³⁵⁸ Whaingaroa Harbour Care felt that a land based disposal system, which was the same as that favoured by Tainui Awhiro, would address ‘Iwi concerns’ and treat the nitrates found in the waste. ‘The only way nitrates can be removed from effluent, is to spray irrigate effluent onto land and allow soil bacteria to convert nitrates into nitrogen. This process cannot occur in water.’ Whaingaroa Harbour Care pointed to the land based disposal system that had been developed and implemented by the Taupo District Council, which was willing to provide information (free of charge) as well as help in setting up a similar land disposal system in Raglan.³⁵⁹

Ultimately the RSCG went ahead with approving an option in which wastewater was treated through a wetland system and ultra-violet disinfection but that would ultimately be

³⁵⁶ NIWA, ‘Raglan Wastewater Treatment,’ February 1995. WDC Raglan Steve Soanes Archive, p 5 (supporting papers #206)

³⁵⁷ RA Firth to WRC, 24 February 1995. Waikato Regional Council File 60 66 83A Vol 4 (supporting papers #207)

³⁵⁸ ‘When nitrates enter water systems, they cause weed and algal blooms. When these plants decompose, oxygen is depleted from the water, and in extreme conditions causes fish and other aquatic life to die.’ Val Hollard to General Manager WDC. 23 December 1995. WDC Raglan Steve Soanes Archive (supporting papers #208)

³⁵⁹ Ibid. (supporting papers #208)

released into the harbour. The new sewage system was expected to cost \$3.3 million of which \$700,000 would come from the WDC's coffers and \$2.6 million from Raglan rate-payers over the following six years.³⁶⁰ On the day that the RSCG voted on which sewage option to support, Angeline Greensill was absent due to other commitments and Eva Rickard abstained from voting. Only three out of the eight members of the RSCG that were present supported the option.³⁶¹ According to the WDC, land based options were not viable in Whaingaroa Harbour because of the 'steep topography and low permeability soils in the Raglan area.' There was a high risk that wastewater disposed of to land within the harbour catchment would ultimately end up in the estuaries and tidal arms of the harbour and would lead to a build-up of nutrients and other contaminants in ecologically sensitive inner harbour areas. The WDC stated that tangata whenua groups had supported the option chosen because it would ensure that no final wastewater, no matter how well treated, would be allowed to enter the estuary. The WDC's claim was questionable in light of repeated opposition by tangata whenua to any discharges to water. In addition the oxidation ponds that existed at that time had been built over a taniwha den (belonging to Te Atai o Rongo) and a condition of the new water right would be to build new oxidation ponds and convert the old oxidation ponds into wetlands.³⁶²

The WDC stated that ongoing consultation, in addition to tangata whenua representatives on the RSCG, had been undertaken with representatives of 'Harbour Marae' regarding the proposal. The concerns that were raised related to the ecological values of the Harbour and its food sources but no concerns were allegedly raised regarding wahi tapu. 'The main issues of concern of the [Tainui Awhiro Ngunguru te Po Ngunguru te Ao Management] Committee related to the level of treatment of the wastewater, the possibility of wastewater

³⁶⁰ 'Council to pump \$4m into Raglan,' *Waikato Times*, 19 June 1997

³⁶¹ 'Statement of Evidence of Angeline Ngahina Greensill,' RMA 305/99

³⁶² WDC, 'Raglan Wastewater Treatment and Disposal System Upgrade, Vol 1,' August 1997. WDC Raglan Steve Soanes Archives, pp 101-104 (supporting papers #209)

ending up on the beaches or in the upper reaches of the Raglan Harbour, and contamination of nearly shellfish beds...Continuing consultation with local iwi representatives is being undertaken to ensure that technical studies address matters of concern and that they are confident of the integrity of the study results.’ The WDC also claimed to have addressed the concerns that had been raised by Tex Rickard back in 1975 with the original sewage system that had been developed. Over twenty years later it was claimed that nearly all of Rickard’s concerns had now been addressed with the new sewage system that was proposed, except for perhaps the most important aspect—the decision to continue discharging directly to the ocean.³⁶³

In October 1997 the WDC’s resource consent applications for the new sewage system was sent to Angeline Greensill, Steve Clark (Chairman of the Poihakena Marae Committee) and Shane Solomon of the Tainui Maori Trust Board.³⁶⁴ Submissions in opposition were received from a number of individuals associated with Tainui Awhiro: Tex Rickard, Margaret Moke, Alcira Greensill, Rangi Kereopa, Eva Rickard, L Tupaea, Angeline Greensill, Massey and Rachel Ormsby and Jacqui Amohanga, and Lai Toy.³⁶⁵ Robert Te Kotahi Mahuta and the TMTB and Nga Uri Rangatahi O Te Hau Tawhiri Matea also made submissions to oppose the WDC’s proposed sewage scheme.³⁶⁶ The TMTB would later remove its opposition following amendments to the original consent.³⁶⁷ Others who opposed the WDC’s applications were R.E. Van Der Helder, R.A. Rumble and Boyd Dixon. Greensill’s submission in opposition alleged that only 3 out of 8 members of the RSCG voted for the option

³⁶³ Ibid, p 106-109 (supporting papers #209)

³⁶⁴ WRC to Greensill, Steve Clark and Shane Solomon, 20 October 1997. Waikato Regional Council File 60 66 83A Vol 5 (supporting papers #210)

³⁶⁵ Lai Toy commented in her submission: ‘I will not be able to grow and collect seafood at Whaingaroa. It is ugly to look at the shit ponds.’ Lai Toy, Massey and Rachel Ormsby and Jacqui Amohanga to WRC, 13 November 1997. Waikato Regional Council File 60 66 83A Vol 5 (supporting papers #211)

³⁶⁶ GM Sandelin to WRC, 13 November 1997. Waikato Regional Council File 60 66 83A Vol 5 (supporting papers #212)

³⁶⁷ Tim Manukau to Graeme Cooper, 10 February 1999. Waikato Regional Council File 60 66 83A Vol 6 (supporting papers #213)

put forward by the WDC. Tainui Awhiro vehemently opposed not only the discharge to the sea but any attempts to build another outfall pipeline through Te Kopua land. Greensill's submission also stated that the Assessment of Environmental Effects (AEE) made assumptions about the effects on the marine environment that were not accurate—bathing quality would not be adequate and neither would the shellfish quality.³⁶⁸

A pre-hearing meeting of those opposed to the WDC's resource consent application was planned for 18 December 1997 at Poihakena Marae. One of the submitters in opposition, Lai Toy, had asked that the meeting be delayed as a result of Tauywa Eva Rickard's death but the WRC decided to continue with the planned meeting and meet separately with Angeline Greensill and her family in January 1998.³⁶⁹ At the 18 December 1997 meeting there were concerns expressed about the notification system that would be established to ensure that discharges were only occurring at specified periods. There was considerable discussion about land-based methods of disposal that had been ignored by the WDC. The meeting also discussed the decommissioning of the oxidation pond at the taniwha den and the site's conversion to wetland.³⁷⁰ There were similar concerns expressed at the January meeting with Angeline Greensill and her family. As a result of these meetings the WRC and WDC attempted to work with tangata whenua on finding possible sites for land-based disposal.³⁷¹ Greensill believed that the Van Houts' farm could be used for land-based disposal but the WDC maintained that the farm was too far away and the costs of getting the raw sewage to

³⁶⁸ Tainui Awhiro Ngunguru Te Po, Ngunguru Te Ao Management Committee submission, 13 November 1997. Waikato Regional Council File 60 66 83A Vol 5 (supporting papers #214)

³⁶⁹ Lai Toy to WRC, 14 December 1997; KM Barlow to Lai Toy, 17 December 1997: Waikato Regional Council File 60 66 83A Vol 5 (supporting papers #215)

³⁷⁰ Graeme Cooper to WDC, 23 December 1997. Waikato Regional Council File 60 66 83A Vol 5 (supporting papers #216)

³⁷¹ Graeme Cooper filenote, 18 March 1998; Mike Safey to WRC, 26 March 1998: Waikato Regional Council File 60 66 83A Vol 5 (supporting papers #217)

the site would be prohibitive. The WDC planned to have a review of alternative sites ready for submitters by late May 1998.³⁷²

Throughout 1998 the WDC complained of a lack of engagement by tangata whenua with the WDC over the development of alternatives for the land-based disposal of treated sewage. In contrast Tainui hapu and other tangata whenua felt that they had met and spoken with representatives from the WDC numerous times but that the WDC was not listening.³⁷³ By the end of the year the WDC had made some changes to its proposed wastewater system: the oxidation pond located on the taniwha den would be completely decommissioned and the new outfall pipe would not be routed through Te Kopua land. WDC stressed that discharges to sea were necessary because of the low permeability of the soil around the harbour. In terms of testing the effects of the discharge on shellfish beds, local Maori had been unwilling to provide the precise locations of shellfish beds lest they attract unwanted publicity.³⁷⁴

3.2.4 Resource consent monitoring 1994-1999

While tangata whenua tried to have a land-based system implemented during the RSCG process, the WDC continued to breach the conditions of its consent from the approval of the new consent in 1994 through to the late 1990s. The breaches of the consent impacted upon Maori because they resulted in the discharge of wastewater into the harbour. These discharges subsequently had a negative impact on the customary fisheries in the harbour. Limited monitoring took place from 1994-1997.

In June 1996 a sewer pipe broke on a property on Rakaunui Street, near Poihakena Marae. As a temporary solution the sewage was pumped onto the street directly. The sewage ran down the street and eventually flowed onto Wainui Road and into a stream that runs into

³⁷² Graeme Cooper filenote, 27 April 1998. Waikato Regional Council File 60 66 83A Vol 5 (supporting papers #218)

³⁷³ Jim Milne to WRC, 21 June 1999. Waikato Regional Council File 60 66 83A Vol 7 (supporting papers #219)

³⁷⁴ Mike Safey to WRC, 15 September 1998; Mike Safey to Greensill, 17 December 1998: Waikato Regional Council File 60 66 83A Vol 5 (supporting papers #220)

Pokohue River and then into Whaingaroa Harbour. Gaye Thompson, who is affiliated with Poihakena Marae, wrote to the WDC Mayor to express her disappointment that sewage was dumped into the Pokohue River.

I am devastated by this act because firstly, my property was directly affected and no one informed me of the situation. Secondly, I strongly criticise the decision to allow the effluent to be disposed into the creek. Worse still, I feel there has been lack of regard for the site, for this creek runs below our family cemetery, and a demonstrated disrespect for Maori in their practice for gathering of food. Pokohue River is noted for its whitebaiting activities and the Harbour itself is a source of food supply for Maori, particularly those Maori from within this area, who will freely collect kaimoana from the Harbour. It is culturally offensive to Maori to eat food contaminated by human waste and worse still to gather and eat such food supply without warning of contamination. Given the area where this discharging took place it raises the question of whether Council staff, particularly those involved with this decision and the task of discharging, have a fair and equitable standard of what is Maori. The tangata whenua, including myself, find this practice unacceptable. We feel this could have been managed better and such offensiveness avoided by having the contents pumped and taken away. I want to know: - why was I never notified – by what virtue or right can Council dispose of sewerage into a creek – what is the procedure used by Council in handling such situations – does Council take into consideration the cultural beliefs and behavioural practices on how Maori gather their food – how exactly was this situation resolved and what is the current status – does Council have a policy on how to consult with tangata whenua particularly when their areas i.e marae, papakainga are affected.

Finally, I observed at the last Raglan Community Board meeting, 11 June 1996, commencement of a field study, cost approximately \$40,000, was approved so as to identify the options for providing an environmentally acceptable effluent discharge. In one instance acceptability of discharging effluent into the Harbour is to be tested and verified by Council; but in practice Council has discharged effluent into the Harbour regardless. The mind boggles Your Worship! Pumping and taking away the effluent is a minimal cost compared to \$40,000 and or the consideration of the health issues at risk. I should also add the residents are extremely angry more so for pumping out the pipe on the roads!³⁷⁵

³⁷⁵ Gaye Thompson to WDC Mayor, 17 June 1996. Waikato District Council (Ngaruawahia) File 55 06 17 Vol 3 (supporting papers #221)

Another Raglan resident who was not tangata whenua but lived on Rakaunui Road as well and the Whaingaroa Harbour Care Society demanded similar answers from the WDC.³⁷⁶

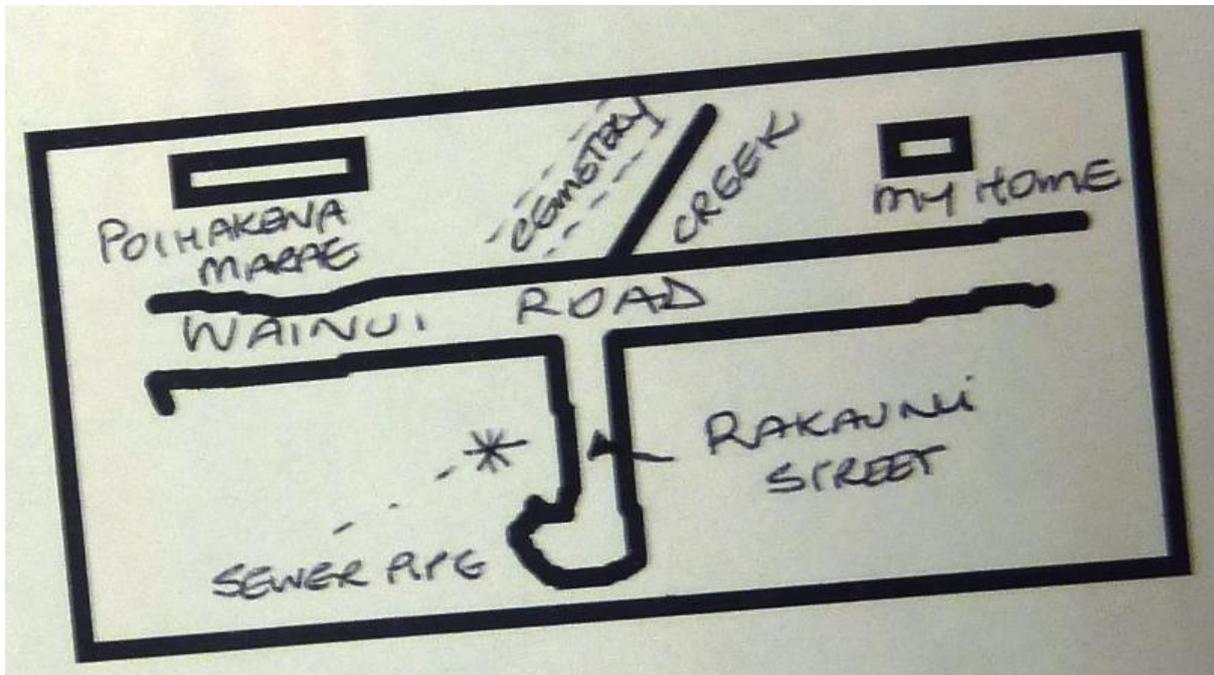


Figure 11: Diagram of location of sewer pipe, cemetery and Creek

³⁷⁶ Peter Lewendon to WDC CEO, 24 June 1996; Fiona Edwards to WDC CEO, 30 June 1996: Waikato District Council (Ngaruawahia) File 55 06 17 Vol 3 (supporting papers #222)

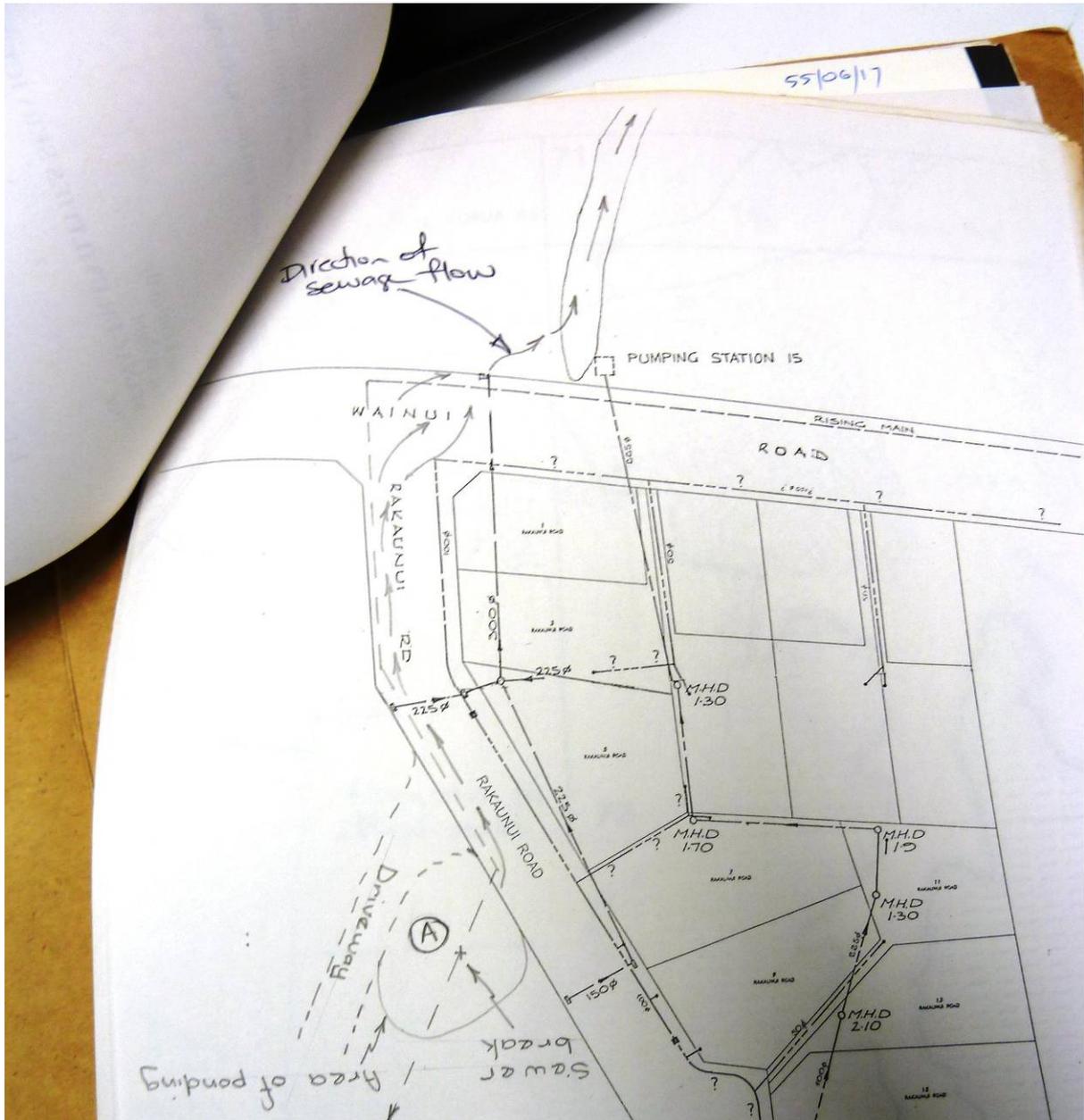


Figure 12: Diagram of direction of sewage spill

The Mayor responded to Thompson a few days after she sent her complaints. He apologised for the incident and stressed that procedural errors had caused the accidental disposal onto both the road and the creek. The Mayor tried to assure Thompson that the WDC did respect cultural beliefs and that it would not occur again.³⁷⁷

³⁷⁷ WDC Mayor to Gaye Thompson, 21 June 1996. Waikato District Council (Ngaruawahia) File 55 06 17 Vol 3 (supporting papers #223)

Community Health Waikato wrote to the WDC requesting information about the sewage spill. 'Health Waikato is concerned that appropriate measures are taken to protect public health in the event of such occurrences.'³⁷⁸ The sewage spill also made it into the *Waikato Times* and *New Zealand Herald*. 'Health Waikato's health protection officer David Cumming said the spill created the potential for diseases such as salmonella and hepatitis A to spread with the contaminated water.' The WRC Programme Manager of Energy and Utilities complained that the WRC had been alerted to the problem by a member of the public and not the WDC. He commented that 'the district council had been asked to explain why sewage was pumped into the street, why other authorities were not informed of the spill and why neighbours were not warned of the dangers...at this stage, legal action is certainly a possibility.'³⁷⁹

An unofficial internal report by the WRC sometime in 1997 showed that the WDC had complied with a few conditions but not with most. The first five conditions (a-e) were related to water quality standards and were largely complied with except for condition (b).³⁸⁰ The next five conditions were related to documentation and were either partially complied with or not complied with at all. Condition (f) related to the WDC maintaining 'a record of treatment system operations' that would address the reasoning and frequency of pond, pump and pumping station maintenance; the occurrences and reasons for overflows; a daily record of the total volume of effluent discharged; and any operational issues with the treatment ponds. The WDC was meant to supply this information to the Waikato Regional Council at six monthly intervals. The first report was supposed to be received on 14 August 1994 and

³⁷⁸ Health Protection Officer to WDC CEO, 26 June 1996. Waikato District Council (Ngaruawahia) File 55 06 17 Vol 3 (supporting papers #224)

³⁷⁹ 'Sewage causes council stink,' *Waikato Times*, 26 June 1996; Paul Gregory, 'Council faces case over sewage spill,' *New Zealand Herald*, 27 June 1996: Waikato District Council (Ngaruawahia) File 55 06 17 Vol 3 (supporting papers #225)

³⁸⁰ See Figure 9: Conditions of Consent 900358, pp 111-112

every six months afterwards but only three reports were ever received by the WRC and they were all late.³⁸¹

Figure 13: Table of coastal permit monitoring by the WRC, 1994-1997

Date report was meant to be received	Date report was actually received
14 August 1994	7 September 1994
14 February 1995	6 April 1995
14 August 1995	2 October 1995
14 February 1996	Never received
14 August 1996	Never received
14 February 1997	Never received

Condition (g) stated that the WDC ‘shall retain appropriately experienced persons to develop an environmental monitoring programme to determine the potential impact of this discharge on public health.’ (emphasis in original) The programme was to be written within six months from the date of granting of the permit and would include reference to the effect of the discharge on edible shellfish and swimmers as well as their report procedures. This condition was not complied with as a draft environmental monitoring programme was only received on 13 September 1994 nearly seven months after the granting of the permit and a second draft on 1 March 1995. The second draft contained advice that NIWA would be providing information on the effects of effluent discharge on marine biota. Condition (h) stated that the WDC would provide results from their monitoring programme to the WRC at regular intervals but this was not complied with.³⁸²

Condition (i) stated that the WDC should ‘investigate alternative options for the disposal of Raglan township effluent’ and report to the WRC within one year of the granting of the permit on the options investigated and reasons why a particular option was chosen.

³⁸¹ Waikato Regional Council, Comments on ‘Coastal Permit,’ Written sometime in 1997. Waikato Regional Council file 60 66 83Z Vol 1 (supporting papers #226)

³⁸² Waikato Regional Council, Comments on ‘Coastal Permit,’ Written sometime in 1997. Waikato Regional Council file 60 66 83Z Vol 1 (supporting papers #226)

This part of the condition was met when a report prepared by NIWA indicating possible disposal options was received by the WRC on 1 March 1995. The next part of condition (i) stated that within three years of the granting of the permit a trial would be undertaken to investigate the feasibility of the option chosen. This was not done. The final part of condition (i) related to reports that the WDC was meant to complete at annual intervals on upgrades to the treatment plant and their effects on the discharge. While NIWA's report from March 1995 was received by WRC nothing further was ever produced. The last two conditions, relating to stormwater runoff (k) and the concentration of BOD5 in the discharge (l), were complied with. Out of twelve conditions the WDC complied fully with only six conditions and partially complied with three conditions. It did not comply at all with three other conditions, including condition (j) provided the WRC with the opportunity to review the conditions of the permit every six months to deal with any adverse effects on the environment arising from the exercise of the permit. The WRC never took this opportunity.³⁸³

Over three years after the resource consent was granted the WDC finally began to develop an environmental monitoring programme, but only because another resource consent was now necessary. In October 1997 a WRC official was asked to comment on the WDC's proposed monitoring scheme.

Condition (g) of the existing consent requires that an EMP be '*commenced within six months from the date of granting of this permit...*' The current consent was granted in September 1993, but no monitoring programme has been undertaken so far. This is acknowledged by WDC in its letter dated 30 Sept 1997, which states that '*Council will shortly be undertaking baseline monitoring to support its resource consent applications for the proposed upgrading works as soon as weather conditions permit. The baseline survey will exceed the scope of the attached draft monitoring programme*'...It is my understanding that the application has been notified last week, i.e. the proposed monitoring programme can hardly be described as 'supporting the

³⁸³ Waikato Regional Council, Comments on 'Coastal Permit,' Written sometime in 1997. Waikato Regional Council file 60 66 83Z Vol 1 (supporting papers #226)

application’...It is of concern that an application that clearly provides insufficient baseline information, has not complied with the conditions of the existing consent, and received by an applicant with such an extremely poor track record of performance has been notified in such a haste. (emphasis in original)

The WRC official also had problems with a number of specific issues related to the proposed methods of monitoring shellfish, water quality, sampling and analysis, and reporting. With regards to reporting the WRC official commented, ‘Let’s hope they meet this requirement this time!’³⁸⁴

The first results from the WDC’s environmental monitoring programme were sent to the WRC on 24 December 1997 for the period from June 1997 to November 1997. The only result of the monitoring programme that was entirely within the resource consent’s condition was the faecal coliform count. While the coliform count is one way of measuring the quality of the wastewater other measures were also done such as measuring the level of BOD5, the level of suspended solids and the level of dissolved oxygen—all of which were above the consent limits at one time or another in the monitoring period. The level of BOD5 was only above the limit three times (out of fifty) during the monitoring period while the level of suspended solids was above the limit twenty times (out of fifty). The level of dissolved oxygen was above the limit for the entire monitoring period.³⁸⁵

The results from the November 1997 to April 1998 monitoring period were very similar to the previous monitoring period. The faecal coliform count was well within the limits but the level of BOD5 was exactly the same (above the limit three times) as well as the level of dissolved oxygen that was above the consent limit for the entire monitoring period. The level of suspended solids was slightly less in breach of the consent limit and exceeded

³⁸⁴ The WDC stated that there was ‘no realistic possibility of discharge from the proposed extended outfall affecting contact recreation users.’ Beat Huser to Graeme Cooper, 21 October 1997. Waikato Regional Council file 60 66 83Z Vol 1 (supporting papers #227)

³⁸⁵ Emily Botje to Graeme Cooper, 24 December 1997. Waikato Regional Council file 60 66 83Z Vol 1 (supporting papers #228)

the limit fifteen times rather than the twenty times as in the previous monitoring period.³⁸⁶ In mid-March 1998 Angeline Greensill had contacted the WRC to express her concern about the Raglan sewage ponds and whether any tests had been carried out on quality of the discharge.³⁸⁷

The results from the April 1998 to June 1998 monitoring period continued much of the same pattern with some improvements but also some poorer results. Both the faecal coliform count and the level of BOD5 were within the limits. The level of suspended solids were over the limit in all the results in this monitoring period except one and the level of dissolved oxygen was once again over the limit throughout the period.³⁸⁸ For the July 1998 to January 1999 monitoring period the results were once again very similar. For the first time in the monitoring programme the faecal coliform count exceeded the limit but only once in the monitoring period. The level of BOD5 was once again over the limit three times as it had been in previous periods. The level of suspended solids was over the limit about half of the time and the level of dissolved oxygen was over the limit during the entire monitoring period. In each monitoring period the limit for total discharge per day (2600 cubic metres) was never exceeded.³⁸⁹

During this monitoring period there were repeated issues with one of the pumping stations which had allowed sea water to infiltrate the system in September 1998. This created a total system failure which became very obvious from the intense odours emanating from the oxidation ponds. When the WRC contacted the WDC regarding the issue they were informed that they had known about the problem for a few days and had been trying to resolve the

³⁸⁶ Emily Botje to Graeme Cooper, 20 May 1998. Waikato Regional Council file 60 66 83Z Vol 1 (supporting papers #229)

³⁸⁷ Call Number 638, 16 March 1998. Waikato Regional Council file 60 66 83Z Vol 1 (supporting papers #230)

³⁸⁸ Emily Botje to Graeme Cooper, 4 August 1998. Waikato Regional Council file 60 66 83Z Vol 1 (supporting papers #231)

³⁸⁹ Emily Botje to Graeme Cooper, 14 February 1999. Waikato Regional Council file 60 66 83Z Vol 1 (supporting papers #232)

issue. The WDC 'was advised that it was disappointing that WDC staff had not informed WRC of the event.'³⁹⁰ Then in October and early November 1998 there were a number of sewage overflows from the same pumping station with the resulting discharges into the harbour outside of consent time limits.³⁹¹ There had been no change from the previous system, the concerns of Maori had not been addressed and the RSCG had proven largely ineffective. Unsurprisingly Maori objectors to the WDC's proposed sewerage upgrade took their case to a WRC Hearing.

3.2.5 1999 WRC Hearings

An Independent Hearing Commissioner, AR Watson, had been appointed by the WRC to hear and decide on the WDC's resource consents for Raglan's 'Wastewater Treatment Purposes' in early 1999.³⁹² Hearings were held in Raglan for four days in mid-February 1999. Watson decided to grant the consents and dismiss the appeals in opposition. Although he recognised the limits of the RSCG's consultation process, specifically that the WDC maintained a bias against land based disposal, he nonetheless felt that the WDC had considered a range of alternative options. In terms of the taniwha den upon which one of the oxidation ponds had been built in the 1970s Watson felt that the WDC had not done enough to sufficiently recognise the taniwha's significance to tangata whenua. He felt that the entire oxidation pond at that specific site, rather than just a portion which the WDC had wanted, should be removed from the treatment system and be rehabilitated and planted.³⁹³ Watson recognised that the tangata whenua submitters opposed the discharge of any wastewater, no matter how well it was treated, into the Harbour but that a compromise needed to be made.

³⁹⁰ Call Number 1199, 11 September 1998. Waikato Regional Council file 60 66 83Z Vol 1 (supporting papers #233)

³⁹¹ Call Number 1325, 30 October 1998. Waikato Regional Council file 60 66 83Z Vol 1 (supporting papers #234)

³⁹² Te Anga Nathan, 'Harbour waste pipeline may get three more years,' *Waikato Times*, 19 February 1999; Philippa Stevenson, 'Growth at Raglan overloads sewers,' *New Zealand Herald*. 10 February 1999

³⁹³ AR Watson, 'Decision by the Independent hearings commissioner appointed to hear and decide the notice of requirement,' 14 April 1999. WDC Raglan Steve Soanes Archives, p 5-10 (supporting papers #235)

[T]he Commissioner does not in any way under-rate the clearly deep concerns by tangata whenua for discharge in this manner in terms of spiritual, cultural and environmental considerations. There is a fundamental conflict with tangata whenua values but in all the circumstances the arrangements now proposed by the District Council are evidenced as being the most practicable for providing satisfactory wastewater treatment and disposal for the Raglan locality.³⁹⁴

As the Commissioner says, the option chosen may have been the most practicable but there were other options and despite the cost being greater the other options were not unreasonable. It seems that Whaingaroa Maori, a minority in the community with cultural values substantially different from most of the majority, were likely to miss out in a ‘balancing of interests’ exercise such as the RSCG.

Two days after the Independent Commissioner, AR Watson, gave his support to the notice of requirement, the Waikato Regional Council Hearing Committee gave their less than unanimous support for a series of resource consents that essentially allowed the WDC to set up a new wastewater system that on the whole did not recognise tangata whenua concerns. The Hearing Committee was comprised of three WRC Councillors: DJM Peart, LA Livingston and ECM Penny. Peart and Penny provided support for the WDC’s resource consents while Livingston provided a dissenting opinion opposing the consents. Eight witnesses appeared in support of the WDC attesting to the WDC’s alleged claims that extensive consultation with tangata whenua had taken place, that the new treatment would ensure that kai moana was not affected and that land-based alternatives were not economically feasible. The last WDC witness, a professional planner named Mr Mathieson, did give his opinion that ‘if discharge of wastewater into the sea continued against the stated

³⁹⁴ Ibid, p 12 (supporting papers #235)

opposition of Tangata whenua that section 6 of the RMA would not have been recognised and provided for.³⁹⁵

Fourteen submissions were received regarding the WDC's application. Only one (T Duff, President of the Point Boardriders Club) was supportive of the WDC. Eleven submissions were opposed to the WDC's application and supported the views of tangata whenua. B Dixon, M Hamilton, M James, C Ralph, L Toi, J Williams, J Amohanga, P Kereopa, T Rickard, H Kereopa, M Kelly and A Greensill all made submissions that the discharge of (even treated) wastewater was culturally offensive to tangata whenua and that kai moana would continue to be negatively affected under the new wastewater treatment system. Nearly all the submitters who opposed the WDC felt that consultation during the RSCG process had not been adequate and that alternative land-based systems had not been realistically or actively pursued. None of the tangata whenua members of the RSCG had voted for the option being taken by the WDC. Greensill made clear that the oxidation ponds built on the taniwha den would have to be completely reverted to wetland, not just a portion of it. Tangata whenua supported the permaculture option of wastewater disposal advocated by another (Pakeha) submitter, Steve Hart.³⁹⁶

The majority of the Committee (Peart and Penny) voted in favour of granting the consents. They nonetheless expressed serious doubt about the level of consultation and exploration of alternatives and nearly declined the applications because of the perceived shortcoming in those areas. In the end they supported the application because the wastewater system in place at that time was so untenable and land based options were allegedly economically and strategically unfeasible that something needed to be done. Greensill noted that the WDC 'will talk about the cost of a land-based system but Raglan is growing and I

³⁹⁵ DJM Peart and ECM Penny, 'Report of the Waikato Regional Council Hearing Committee,' 16 April 1999, WDC Raglan Steve Soanes Archives, p 7 (supporting papers #236)

³⁹⁶ Ibid., p 7-10 (supporting papers #236)

don't think developers are paying their share of development costs.'³⁹⁷ The majority of the Committee did advise that the entire oxidation pond built upon the taniwha den would need to be completely decommissioned and the area reverted to wetlands.³⁹⁸

The third member of the Committee, Lois Livingstone, presented a dissenting minority decision and disagreed with the decision of her colleagues. She questioned the extent of the public consultation that took place to decide the new wastewater system, the lack of genuine consideration of other land-based alternatives and the conflict of interest that Councillor Rod Wise may have had in deciding upon the new system. 'According to the evidence, the option chosen was the result of a somewhat spurious vote taken by the Raglan Sewage Consultative Group. It is noted that Councillor Rod Wise's vote was the deciding one and the question must be asked as to a conflict of interest as Cr.Wise is the Chair of the Engineering Committee of WDC and lives in Hamilton. It is also noted that Angeline Greensill was absent and that the late Eva Rickard abstained. There is no explanation given for this and the outcome could have been entirely different if there had been full representation of tangata whenua. Considering it was the wish of the original hearings committee and the Minister of Conservation that tangata whenua concerns be dealt with in good faith when arriving at a decision on the best option it is unfortunate that tangata whenua could not participate fully in the voting procedure.' Livingstone was not confident that the new system would prevent overloading of the oxidation ponds and stressed that a permaculture option that at least incorporated some of the option presented by Steve Hart could be economically feasible. She concluded, 'there is obviously much bad feeling among

³⁹⁷ Geoff Lewis, 'Raglan Maori may challenge consents,' *New Zealand Herald*. 28 April 1999. Waikato Regional Council File 60 66 83A Vol 9

³⁹⁸ DJM Peart and ECM Penny, 'Report of the Waikato Regional Council Hearing Committee,' p 11-16 (supporting papers #236)

the community towards the Waikato District Council and its officers and this is an opportunity to create a win-win situation for all parties.³⁹⁹

Livingstone's perception of the 'bad feeling among the community' towards the WDC was reflected in the comments made by Michael 'Malibu' Hamilton of Ngati Te Wehi. His statement in the Whaingaroa Environment newsletter following the Committee's decision echoed the points Livingstone made in her dissenting decision regarding inadequate consultation and he also questioned the costs of the system put forward by the WDC.

1. Consultation was completely inadequate, in fact it went so far as to completely alienate the whole community. Waikato District Council engineering services presented to a consultative group a comparative chart that completely cut out alternatives to sea disposal so that their preferred system could be implemented. **2. Mana whenua consultation was completely lacking.** Historically Council has failed in their consultation process with iwi to the point where they were taken to [the] Environment Court in the past. They appear to have had no change in attitude or process as a result of that experience and continue to marginalise mana whenua as just another community group. To add insult to injury they also continue to uphold their own NIWA Option 3A, ie, disposal to the sea as the preferred option aware of the fact that this is completely offensive to iwi. The community was completely left out of the loop as the consultative groups report went to the Community Board and was accepted as the option. The land based disposal system was [\$]1.8 million but was presented to the consultative group as having a [\$]4.4 million cost. Malibu submits that the Council figures for NIWA Option 3A, are inaccurate as it does not include the costs of maintenance and interest, that the more real cost to Raglan rate payers would be around the [\$]6.8 million dollar mark. 3. The community was left to a submission stage to only debate the qualities of that option only, and a for & against situation developed. Out of all the submissions only DOC and Fred Litchwark (sic) of Harbour Care supported the Option 3A which means the majority are against it. The need to protect the harbour is great but surely not at the expense of the coastline. 4. The \$400,000 dollars that Council has spent on consultation and design – Malibu would like Council to give the community a breakdown of that expenditure so that [the] community can judge for themselves the efficacy of that expenditure that Council is claiming to have spent in the interest of fair and adequate consultation. Written requests have been made to the Council and Community Board asking for alternative

³⁹⁹ Lois Livingstone, 'Dissenting Minority Decision of Lois Livingstone, Hearing Committee Member, Waikato Regional Council,' 14 April 1999, WDC Raglan Steve Soanes Archives, p 17-18; 'Regional approach mooted for sewage,' *Waikato Times*, 6 May 1999; Waikato Regional Council, 'Split Decision on Raglan Wastewater System,' 22 April 1999: Waikato Regional Council File 22 03 35 Vol 9; 'Town's sewerage not adequate, council warned,' *New Zealand Herald*, 23 April 1999. Waikato Regional Council File 22 03 35 Vol 10 (supporting papers #237)

funding to be sourced so that the costs of the ‘Sewerage System’ upgrade does not sit only on Raglan rate payers. Malibu Hamilton believes that the resources in our community exist and are utilised by a wider group than just the residents of Raglan. He suggests that the problem of sewerage disposal to sea is a national one – is it possible that Raglan has the ‘audience’ to lead a trend away from the continued use of inefficient and environmentally damaging practices of sewerage disposal – as a model for other communities to emulate and could seek funding nationally as there are creditable alternative options available.⁴⁰⁰

The poor state of relations between tangata whenua and the WDC was apparent in a letter from Malibu Hamilton to the WDC Development Services Engineer.

Utilities Manager [WDC] in a public statement in the ‘This Week’ publication dated 6 May made comment to the effect that negotiation would take place with the appellants. The recent public meeting attended by yourself and the Mayor on 17 August with your presentation of the same proposal and the commitment council gave to have a pre-hearing discussion with Tangata Whenua then the non-Maori appellants starting on 5 September and non-Maori at a later date was questionable behaviour. The Tangata Whenua person knew of no such advance being made and questioned council to that effect. It seems council had not arranged this date properly and can be seen as questionable as to its intent. Your letter to apply letterbox democracy and to put the onus on to the group of appellants is certainly not what was envisaged by the group of appellants – as proper consultation or a pre-hearing meeting. The group of appellants has in their application all preferred to have had a properly constructed consultation period of a pre-hearing as defined by Justice McGeegan on consultation. The public statement in the Hamilton Press on 9 September as to an information leaflet to inform the public of the previous alternatives as presented in the consultation group is again a very narrow perspective as to possible alternatives. Council makes statements as to a willingness to negotiate with the group of appellants in preference to going to the Environment Court, yet does the opposite in its action. Council came to the public meeting in:

1. The town hall not to listen to the community but to further present their case in pushing a system that has been rejected by the majority of submitters and Regional Council.
2. Council is going to produce a leaflet to present to the public which is a narrow view of the possible alternative and does not include the other alternatives which the group of appellants feel as definitely possible and council has not to date asked the group to be included in this information leaflet drop.

⁴⁰⁰ Malibu Hamilton, ‘Stop sewage disposal to the sea,’ *Whaingaroa Environment News*, Issue No. 7, June 1999. Waikato Regional Council File 22 03 35 Vol 10 (supporting papers #238)

I once again ask that a proper pre-hearing meeting take place with the group of appellants and that a balanced view be put forward to the community and ratepayers.⁴⁰¹ (emphasis in original)

Malibu Hamilton began to attend meetings of the Whaingaroa Environment group around the time that the WRC Committee released its decision regarding the Raglan sewage scheme. During a mid-June meeting of the Whaingaroa Environment group a question was raised about why the group had been silent on certain issues such as the Raglan sewerage scheme. It is unclear whether Hamilton was the person who asked the question as the minutes do not directly state who asked the question but this was the first meeting that Hamilton attended. The members of the Whaingaroa Environment group responded that the work of the group was as a provider of communication and co-ordination within the catchment community and that being a neutral body was the group's strength.⁴⁰² This may have been why tangata whenua had not become involved in the group's processes. An active advocacy was stressed by tangata whenua in terms of the sewage system, not a neutral stance. This was reflected in the debate over the development of Whaingaroa Environment's 'Shared Vision' for the Whaingaroa Harbour and Catchment. This new 'Shared Vision' sought to remove the emphasis on the group being a 'neutral body.'⁴⁰³

A public meeting was held at the Raglan Town Hall on 17 August 1999 to give members of the public the opportunity to question some of the various people involved in the appeals to the Environment Court including representatives of the WDC as well as those opposed to the proposed sewage scheme. The first speaker was WDC's Planning Manager. He explained that the WDC did not want to go to the Environment Court since money spent there could not be spent on the actual new sewage system. The WDC Planning Manager

⁴⁰¹ Malibu Hamilton to WDC Development Services Engineer, 16 September 1999. Waikato District Council File 55 06 17 Vol 8 (supporting papers #239)

⁴⁰² 'Notes from WE meeting 16 June 1999,' 16 July 1999. Waikato Regional Council File 22 03 35 Vol 10 (supporting papers #240)

⁴⁰³ 'Notes of meeting held 18th August '99.' Waikato Regional Council File 22 03 35 Vol 10 (supporting papers #241)

commented that the WRC's decision to grant the consent (with alterations) was based only on environmental outcomes and the financial limits involved in other land-based schemes. The second speaker was former WDC Councillor for Raglan, Olive Gallagher, who was involved in the Raglan Sewage Consultative Group that had met from 1994-1998. She said 'that the consultation process was not a pleasant time, it was stressful and difficult due to the nature of the group and the conflict that arose within the consultative committee.' 'She felt that the tangata whenua were not listened to as they had wanted no outfall of sewage from any system, right from the start of the process. She felt they were let down by the consultative committee when they recommended a scheme that continues to pipe sewage into the ocean.'⁴⁰⁴

The third speaker was WDC's Project Manager for the proposed sewage scheme. He spoke about the difficulties of implementing a land-based disposal system in Raglan. The Council's engineers and their consultants considered that there was no land area large enough, flat enough and close enough to Raglan with the right soil type and a low enough water table to accommodate the 2,500 tons of water the sewage scheme would produce on its most excessive winter days. The WDC project manager stated that the proposed scheme would make the effluent 20 times cleaner than it was at the time and that by lengthening the outfall pipe the effluent would mix better with the sea water and dilute it further before being carried out to sea by each outgoing tide. When the WDC project manager faced public questioning regarding the taniwha site he claimed that 'the Taniwha Domain had been identified and allowed for in the proposed scheme and if that was not the case then it was a

⁴⁰⁴ 'Sewerage/Rates Strike Meeting,' *The New Chronicle*, 1 September 1999. Waikato Regional Council File 22 03 35 Vol 10 (supporting papers #242)

matter the council would decide, not him.’ This was perhaps not the most encouraging sign from a WDC representative regarding an important issue for Tainui Awhiro.⁴⁰⁵

The fourth speaker was Raglan resident and ecology scientist, Steve Hart. He contested most of what the WDC Project Manager had said regarding the area and soil types required for a land-disposal method. ‘Mr. Hart stated that his permaculture scheme would work well on the existing site using plants and ponds with fish and invertebrates. His scheme would treat all of the town’s waste water without an outfall, the scheme would use the ability of plants to evapotranspire moisture from the soil into the atmosphere and all of the impurities in the waste water would be used by the various plants, fish and invertebrates as nourishment. Mr. Hart stated that this intensive use of the resource (waste water) would eventually make money for the ratepayers and create jobs.’⁴⁰⁶ He accused WDC staff of trying to block his permaculture scheme during the consultation process and claimed that the WDC engineers’ vested interests stopped the WDC from considering alternative options. Hart proposed to present his permaculture option at the Raglan Town Hall on 30 September 1999.⁴⁰⁷ Michael ‘Malibu’ Hamilton specified that tangata whenua had their views ignored. He believed that the WDC were in breach of the Treaty of Waitangi by continuing to ignore Maori views on the matter and discharging wastewater into the harbour.⁴⁰⁸ Hart called for a rates strike from Raglan residents over the WRC decision.⁴⁰⁹

WDC Mayor Angus McDonald spoke next and explained some of the steps that the WDC would take to consult further with the public and ‘in particular Mana Whenua’. WDC

⁴⁰⁵ Ibid. (supporting papers #242)

⁴⁰⁶ ‘Evapotranspiration is the sum of evaporation and plant transpiration from the Earth’s land surface to the atmosphere.’ <<http://en.wikipedia.org/wiki/Evapotranspiration>>, accessed 19 September 2013.

⁴⁰⁷ ‘The \$6 Million Dollar Sewage Question,’ *The New Chronicle*, 15 September 1999. Waikato Regional Council File 22 03 35 Vol 10 (supporting papers #243)

⁴⁰⁸ Ibid.

⁴⁰⁹ Te Anga Nathan, ‘Rates strike called for over sewage,’ *Waikato Times*, 20 August 1999; Further Pakeha opposition to the sewage scheme is available in CC Ralph, ‘Environment Court Appelants State Their Case,’ *The New Chronicle*, undated: Waikato Regional Council File 22 03 35 Vol 10 (supporting papers #244)

staff would hear Maori concerns at a hui at Poihakena Marae on 4 September 1999.⁴¹⁰ He was asked questions about the WDC's plans for privatizing the sewage scheme in the future. McDonald responded that central government was pushing local government to balance its books by selling their assets but that the WDC was not yet planning to privatize the sewage scheme. A member of the Whangamata Boardriders Association, Paul Shanks, advised that any privatization of the sewage scheme should be opposed. He claimed that Whangamata had a permaculture type sewage system installed during the mid-1980s where the treated effluent was sprayed amongst pine trees that worked well except for the fact that local authorities did not monitor the private companies who leased the schemes well enough. Shanks stressed that the Raglan sewage system needed to remain in the public's hands to enable strict monitoring of effluent flows. He also warned that even at 'bathing quality', 2% or 19 people out of every thousand would get sick swimming in the water.⁴¹¹

In September 1999 four Raglan groups and individuals had appealed WDC plans for the sewerage scheme to the Environment Court.⁴¹² Originally the dissenting Councillor from the WRC Hearing Committee, Lois Livingstone, had stated that she would spear-head the appeal to the Environment Court. The Mayor of the WDC, Angus Macdonald, had expressed his concerns to the WRC about a member of the Hearings Committee taking that type of action. He believed it would be an 'enormous conflict of interest which needs to be challenged.'⁴¹³ In late 1999 the Poihakena Marae Committee refused to meet with WDC staff although it is unclear exactly why.⁴¹⁴

⁴¹⁰ Te Anga Nathan, 'Rates strike called for over sewage,' *Waikato Times*, 20 August 1999, Waikato Regional Council File 22 03 35 Vol 10 (supporting papers #244)

⁴¹¹ Ibid. (supporting papers #244)

⁴¹² 'Raglan opposition to treatment plans,' *Hamilton Post*, 8 September 1999. Waikato Regional Council File 60 66 83A Vol 10 (supporting papers #245)

⁴¹³ Angus Macdonald to Neil Clarke, 3 June 1999. Waikato Regional Council File 60 66 83A Vol 7 (supporting papers #246)

⁴¹⁴ Mike Safey to Urlwyn Trebilco, 16 December 1999. Waikato Regional Council File 60 66 83A Vol 7 (supporting papers #247)

3.2.6 The Failure of Mediation and the Raglan Wastewater Working Party, 2000-2004

On 3 May 2000 an Environment Court mediation meeting was held with those appealing the WRC Hearing Committee decision, Malibu Hamilton and Des Baker, Steve Hart, Tainui Hapu and the WDC and WRC. The issues remained the same as they had been back in 1975: the appellants wanted no discharge to the harbour, a relocation of the treatment plant off the existing site, the reinstatement of the existing site to its natural state, no pipeline through Te Kopua land and a review of the costing analysis for alternative land based solutions by someone independent of the applicant's consultants.⁴¹⁵ A further mediation meeting was planned for early June 2000.

On 6 June 2000 a meeting was held at the Raglan Community House to discuss the mediation for the Raglan sewage consents. The mediation was run by an independent arbitrator, Catherine Delahunty. There were a number of tangata whenua, WDC and WRC staff present.⁴¹⁶ The end result of the meeting was that it established a working party consisting of up to 5 people made up of appellants and WDC staff—the Raglan Wastewater Working Party. The meeting had ended before all the issues and options had been addressed so another meeting was set for the end of June to allow Delahunty to set up a terms of reference for the working party and to discuss any unresolved issues.⁴¹⁷ Two further meetings were held at the end of June and then in mid-July to discuss the land-based options also

⁴¹⁵ 'Memorandum of Understanding,' undated. Waikato Regional Council File 60 66 83A Vol 8 (supporting papers #248)

⁴¹⁶ Those present were: Tex Rickard, Marcus James, Chris Tanner, Mike Safey, Gary Ellis, Warwick Bennett, Des Baker, Moses Moke, Kura Moke, Rangi Kereopa, Philip Kereopa, Jackie Amohanga, Angeline Greensill, Matt Hol, Jane Williams, Stephen Frew, Steve Hart, Sheryl Roa, Malibu Hamilton and Colleen Ralph.

⁴¹⁷ Sheryl Roa, 'Memo on Mediation for Raglan Sewage 8/6/00.' Waikato Regional Council File 60 66 83A Vol 8 (supporting papers #249)

available. The WDC staff member at the meetings continued to stress that completely land-based options for disposal were still not viable.⁴¹⁸

At the 9 August 2000 meeting of the working party concerns were raised about the ways in which WDC staff were downplaying the efficacy and feasibility of land-based options. The water classification table which WDC wanted to adopt was also out of step with tangata whenua concerns. Maori opponents of the new system sought a land-based treatment process that had no discharges to the harbour. NIWA had also been developing a land-based option that would use the Wainui Reserve for treatment of wastewater, which tangata whenua approved. Tangata whenua members of the group wanted an independent audit of the Council's information on water quality standards—this reflected the lack of trust that existed between the WDC and tangata whenua despite the establishment of the consultative group. Malibu Hamilton challenged the Waikato Regional Council on their role in the group, in particular whether they would be participating or be merely observers to the process. The WRC would later confirm that it could not be a participant in the process like the appellants and WDC, but only an observer, because of its role as organiser and facilitator of the process.⁴¹⁹

The public pressure on the tangata whenua appellants was increased after John Aldworth of the Waikato based community newspaper, *This Week*, published an article questioning the validity of Maori values associated with Te Rua o Te Atai o Rongo. He questioned why so much had already been spent on the consultation process and placed the blame on the appellants.⁴²⁰ The article was discussed at a meeting of the Raglan Sewerage

⁴¹⁸ 'Minutes of Wastewater Working Group,' 29 June 2000; 'Minutes Summary of Raglan Wastewater Working Party,' 19 July 2000: Waikato Regional Council File 60 66 83A Vol 8 (supporting papers #250)

⁴¹⁹ 'Minutes of 9 August 2000 Meeting,'; Urlwyn Treblico to Raglan Mediation Group, 1 November 2000: Waikato Regional Council File 60 66 83A Vol 8 (supporting papers #251)

⁴²⁰ John Aldworth, 'Taniwha' costly for Raglan,' *This Week*, 14 September 2000; John Aldworth, 'Raglan digs in deeper,' *This Week*, 9 November 2000: Waikato Regional Council File 60 66 83A Vol 8 (supporting papers #252)

Consultative Group and concern was ‘expressed at the comments made by people who were not from the area [and] who had no understanding of the spiritual values involved.’⁴²¹

Another meeting of the Raglan Wastewater Working Party was held at the Raglan Town Hall on 31 August 2000. Raglan residents and participants in the Working Party, Steve Hart and Marcus James, both made presentations on alternative land-based disposal systems. Tangata whenua were generally supportive of their proposals and questioned why the previous Consultative Group had suppressed these options so strongly. Steve Hart alleged that there was a bias against these land-based disposal systems from Council and their consultants.⁴²² Malibu Hamilton reiterated this concern at the March 2001 meeting of the Working Party, ‘You choose the consultant and you have chosen a pre-determined solution.’⁴²³ Hart repeated this allegation at the following month’s meeting, commenting that it appeared that the WDC was ignoring what was happening in Raglan and that the WDC had a preconceived notion about what system would be used. Malibu Hamilton repeatedly asked about whether the oxidation pond located on the taniwha den would definitely be removed, as it seemed that the WDC had still not accepted that it had to be removed and decommissioned. Hamilton also stressed that the fiscal implications were outweighed by the cost ‘of not fixing up the problem now for the mokopunas and grandchildren.’ The meeting minutes noted that ‘if the Group followed the view put forward by the Press that the community could not afford it then he would not believe that it was WDC’s responsibility to say what we could afford.’ Hamilton was noted as saying, ‘it is our money and we will spend it how we want to.’⁴²⁴

⁴²¹ ‘Minutes of 20 September 2000 Meeting.’ Waikato Regional Council File 60 66 83A Vol 8, p 2 (supporting papers #253)

⁴²² ‘Minutes of 31 August 2000 Meeting.’ Waikato Regional Council File 60 66 83A Vol 8 (supporting papers #254)

⁴²³ ‘Minutes of February 2001 Meeting.’ Waikato Regional Council File 60 66 83A Vol 9 (supporting papers #255)

⁴²⁴ ‘Minutes of 20 September 2000 Meeting.’ Waikato Regional Council File 60 66 83A Vol 8 (supporting papers #253)

In early November 2000 a report on the progress of the facilitated workshops was prepared for the Engineering Services Committee of the WDC. It outlined the various options for treatment and disposal that the consultative group had explored, with all disposal options being various forms of alternative land disposal options. The report stressed that progress had been made and relationships had begun to be built between the appellants and the WDC. The report recommended that the consultative group continue its investigations and report back to the Committee in March 2001.⁴²⁵ The November 2000 meeting of the consultative group reiterated that the progress had been adequate but that matters needed to pick up speed.⁴²⁶ The WDC supported the consultative group and 12 of 13 WDC Councillors voted for the group to continue its work through to mid-2001. Only WDC Councillor Michael Hope opposed the group continuing its work.⁴²⁷

On the recommendation of the Working Party representatives, the WDC engaged Pattle Delamore Partners to undertake an assessment of potential sites for the application of treated wastewater.⁴²⁸ The report by Pattle Delamore Partners concluded that there was insufficient land available in the areas identified by the Council for slow rate irrigation disposal. While additional land could possibly be obtained, the capital cost of an irrigation system was still very high. The report noted that the cheapest option would be to upgrade the existing stand alone ocean discharge but it recognized that the cheapest option was not favoured by the Working Party. The most favourable land disposal option was considered to be rapid infiltration but the report stressed that further investigation was needed to refine its

⁴²⁵ Sheryl Roa to Engineering Services Committee, 1 November 2000. Waikato Regional Council File 60 66 83A Vol 8 (supporting papers #256)

⁴²⁶ 'Minutes of the November 2000 Meeting.' Waikato Regional Council File 60 66 83A Vol 9 (supporting papers #257)

⁴²⁷ Community Assets Group Manager to Raglan Wastewater Working Party, 17 January 2001. Waikato Regional Council File 60 66 83A Vol 9 (supporting papers #258)

⁴²⁸ Mike Safey to Urlwyn Treblico, 5 April 2001. Waikato Regional Council File 60 66 83A Vol 9

feasibility and cost estimates.⁴²⁹ The report was presented to the Working Party only seven days before their June 2001 meeting and discussed extensively for nearly the entire meeting. Some of the appellants, especially Malibu Hamilton and Steve Hart, felt that the brief that had been agreed upon by the Working Party had not been provided to Pattle Delamore Partners but a slightly altered brief that suited the WDC better. Most of the meeting was spent discussing the specifics of the report and the possible disposal options. The lack of support from Pattle Delamore Partners for land disposal options concerned the appellants as it seemed that the report's authors were providing the recommendations that the WDC was seeking.⁴³⁰ Despite a year's worth of monthly meetings the appellants still seemed to have a strong sense of mistrust of the WDC and its consultants. Following this meeting Pattle Delamore Partners were contracted to evaluate five alternative land based options for disposal of wastewater. Their report concluded that several aspects of the options suggested were technically feasible but not financially feasible in their entirety.⁴³¹

The Working Party recommended to the Raglan Community Board that a detailed investigation into the rapid infiltration option into the sand dunes at Ngarunui Beach be made at a cost of between \$20,000-30,000. The Community Board did not support the investigation because of a variety of concerns with the fragile nature of the sand dunes, possible erosion and algae growth on the beach, the public perception of disposing effluent on a public reserve and the large capital and operational costs. It was claimed that the Working Party would first

⁴²⁹ Rapid infiltration is sewage system whereby treated wastewater is discharged into land. Pattle Delamore Partners, 'Raglan Land Treatment Options Report,' June 2001. Waikato Regional Council File 60 66 83A Vol 9 (supporting papers #259)

⁴³⁰ 'Minutes of 26 June 2001 Meeting.' Waikato Regional Council File 60 66 83A Vol 9 (supporting papers #260)

⁴³¹ Pattle Delamore Partners, 'Raglan Land Treatment Options: Evaluation of Five Alternative Options,' July 2001. Waikato Regional Council File 60 66 83A Vol 9 (supporting papers #261)

need to address the issues raised by the Community Board before further investigations could be conducted.⁴³²

At the July 2001 meeting of the Working Party the rapid infiltration system was settled upon as the option to investigate fully but the Community Board needed to be convinced of its feasibility and efficacy before funds could be provided. The various options put forward by Steve Hart were rejected at this meeting.⁴³³ At the August 2001 meeting of the Working Party the Raglan Community Board and Engineering Services Committee of the Waikato District Council were invited to attend the later part of the meeting to hear the concerns of the Working Party. At the start of the meeting Malibu Hamilton and Angeline Greensill expressed their frustration at the over-arching impact that the Raglan Community Board (RCB) and Engineering Services (ES) Committee were having on the Working Party. Hamilton felt that the Community Board and the ES Committee were having too much input into the Working Party's business. He commented that 'if this had been clarified at the start the Working Party could have gone forward to nowhere much more quickly!!!!' While the Working Party members understood that the choice of a new wastewater option was going to be a political decision and that the WDC would have to be involved, Hamilton felt that the Working Party was being 'squeezed and manoeuvred' by the RCB and ES Committee. One of the Council's representatives questioned whether the Working Party had developed any alternatives, a criticism which frustrated Hamilton. 'He said to hear Matt [the WDC representative] say we had not brought anything to the table by way of viable alternatives and

⁴³² Gary Allis to the Raglan Wastewater Working Party, 11 July 2001. Waikato Regional Council File 60 66 83A Vol 9 (supporting papers #262)

⁴³³ 'Minutes of July 2001 Meeting.' Waikato Regional Council File 60 66 83A Vol 9 (supporting papers #263)

to find the Group had been squeezed and manipulated to where it was today—well, he was looking forward to going to the Environment Court.⁴³⁴

Hamilton then addressed the RCB and ES members at the meeting and expressed some of the frustrations felt by tangata whenua in developing an alternative to ocean based discharges of sewage and especially the lack of support from local government.

I want to say that for [many] years the Treaty has been in place and has never been honoured. We previously had the R[aglan]C[ounty]C[ouncil] that was our Council for our community. We now have ‘super Councils.’ Never once has mana whenua been recognised and never once has the Treaty been honoured...[O]ther people make the decision on where our money is spent. We have to live in this community and have to bring our children up in this community and the decision of what is done with our money is taken out of our hands. In short, how would you like it if we put a sewer pipe next to your family’s grave [?] The reason why we appealed the decision by E[nvironment]W[aikato] and W[aikato]D[istrict]C[ouncil] was on health grounds. I am pleased to see that our local Councillor has now got a better idea of why several of us are fighting this on health issues. Pathogens are being swept out to sea. Guys are coming out of water today after scratching themselves in the water and spending a week in hospital.

Hamilton then discussed some of the alternatives being contemplated by the Working Party and concluded by noting some of the restrictive structures that had been put in place for the Party. ‘We had to fight to have our minutes taken. We had to fight to have a facilitator here. We have been on this three months hopscotch round-a-bout. Why didn’t we have a proper structure set up from the word go? You have set us up to fail.’⁴³⁵

In September 2001 the Community Board finally approved the detailed investigation of the rapid infiltration land disposal option to be undertaken at an estimated cost of \$36,000. Presumably the Working Party had convinced the Community Board that its concerns from previous months had been addressed adequately.⁴³⁶ A main point of contention remained

⁴³⁴ ‘Minutes of August 2001 Meeting.’ Waikato Regional Council File 60 66 83A Vol 9 (supporting papers #264)

⁴³⁵ Ibid. (supporting papers #264)

⁴³⁶ ‘Raglan Community Board Meeting,’ 4 September 2001. Waikato Regional Council File 60 66 83A Vol 9 (supporting papers #265)

nonetheless—tangata whenua wanted to test the rapid infiltration option but that was only one of many options that tangata whenua desired to have tested. The Community Board and WDC were only willing to test one option.

The rapid infiltration system was subsequently tested in late 2001 with a report being produced by Pattle Delamore Partners (PDP) in January 2002. While the report confirmed that rapid infiltration would be technically possible at Ngurunui Beach, there was only 200m of shoreline to use whereas approximately 10km would be necessary for the amount of sewage that the township of Raglan produces.⁴³⁷ Hamilton and other appellants in the Working Party questioned the findings of the PDP report. The WDC and the WRC made clear at the March 2002 meeting of the Working Party that an Environment Court hearing would be sought because of a lack of agreement following the mediation process. The WDC was offering the complete decommissioning of the front pod over the taniwha den and shellfish standard discharge but it would still flow out into the ocean.⁴³⁸

In July 2002 a verbal agreement in principle was reached with only one appellant (non-tangata whenua, Steve Hart) dissenting but his appeal was subsequently struck out by the Environment Court. The Agreement in Principle included a revised treatment pond concept which was smaller in scale than the one originally proposed and a mechanical filtration plant and UV disinfection that would produce a treated effluent that would meet NZ water quality guidelines for shellfish gathering rather than the recreational bathing quality that had been previously proposed. The front oxidation pond had been developed directly on a wahi tapu and the den of Te Atai O Rongo and its removal and a restoration of the wetland was a key element in the Tainui Hapu appeal. The Agreement also established a new Working Party process which would again investigate land disposal options with the intention

⁴³⁷ Pattle Delamore Partners Report, January 2002. Waikato Regional Council File 60 66 83A Vol 9 (supporting papers #266)

⁴³⁸ 'March 2002 meeting.' Waikato Regional Council File 60 66 83A Vol 9 (supporting papers #267)

that land disposal be implemented within 15 years. The location of the old outfall directly beside Poihakena Marae was supposed to be moved approximately 100 metres out to sea but as a land disposal method was meant to be developed within five years the repositioning proposal was not carried out. The resulting savings (approximately \$650,000) were to be allocated towards the investigation and implementation of a land disposal method.⁴³⁹

The Agreement in Principle was meant to have been signed on 4 August 2002 at the Kokiri Centre in Raglan. In late July 2002 Angeline Greensill backed out of the agreement and sought a 5 year rather than a 15 year consent as well as heavy penalty clauses for breaches of the resource consent that are elaborated upon in a quote from Greensill below. As a result of Greensill backing out, the signing did not take place.⁴⁴⁰ In November 2002 the WDC officially removed itself from mediation and was ready to take their case to the Environment Court.⁴⁴¹

The WRC's lawyer, Jim Milne, had attempted to contact Angeline Greensill to avert an Environment Court hearing but as an ocean-based discharge was still included in the resource consent there was little chance for any practical mediation. Greensill wrote to Milne about her continuing frustrations dealing with the WDC.

While our hapu want this matter resolved immediately we agreed to conditionally accept Council's assurances of better water quality on the condition that they decommission their pipeline (on our land without lease, licence, easement) and cease discharging human wastewater into the harbour mouth within 5 years. By the time we get the use of our space back it will be 30 years, with a 15 year discharge 45 years since we stopped gathering safe seafood, or swam in the area. We have never agreed with the discharge into Whaingaroa (which we find totally offensive and an environmentally unsound practice), but have in my view been extremely patient and generous by allowing the Council a reasonable time to find land based alternatives. We

⁴³⁹ 'Agreement in Principle for Resolution of the Raglan Wastewater Consent, undated. Waikato Regional Council File 60 66 83A Vol 10 (supporting papers #268)

⁴⁴⁰ 'Memorandum of Counsel for the Waikato District Council,' 14 February 2003. Waikato Regional Council File 60 66 83A Vol 11 (supporting papers #269)

⁴⁴¹ Gary Allis to Sheryl Roa, 6 November 2002. Waikato Regional Council File 60 66 83A Vol 11 (supporting papers #270)

indicated to [the] District Council that we wanted a penalty or bond similar to a performance agreement imposed which would become effective on the fifth anniversary of the issuing of the consent and would hopefully act as an incentive for them to move. Council's response was an offer to pay possibly \$5000 a year to use our land for their pipeline increasing this to \$10,000 after five years. It shows they have no understanding of the huge cost our hapu have paid and continue to pay to accommodate their town's activities at our cost. As you have pointed out the term of the discharge appears to be the issue. It isn't just the term, it is the practice itself and the cumulative and future effects on our people and our environment.⁴⁴²

3.2.7 2004 Environment Court decision

The Raglan Wastewater Working Party that had been established in 2000 had not been successful in finding a land-based disposal method that was acceptable to all parties. In November 2002 the WDC's Community Assets Committee had recommended that the WDC withdraw from the mediation process and let the case proceed back to the Environment Court where a final decision would be made.⁴⁴³

After Tainui Hapu and others failed to stop the resource consents for a new sewage system that would treat the waste to a greater extent, they then appealed to have the resource consent provided for only five years rather than the 15 years proposed. Their appeal to shorten the resource consent was rejected by the Environment Court in a judgement delivered on 10 May 2004. Judge DFG Sheppard found that the WDC had consulted extensively with Tainui Hapu, had tried to find alternative land-based options that were economically feasible for the small permanent community of rate-payers and had imposed a series of conditions on the proposed discharge that had been developed by a committee of the Regional Council and an Independent Commissioner appointed by the Regional Council that had heard the original applications for resource consents and submissions in opposition (which included Tainui Hapu). These conditions included:

⁴⁴² Angeline Greensill to Jim Milne, 30 January 2003. Waikato Regional Council File 60 66 83A Vol 10 (supporting papers #271)

⁴⁴³ Peter Harris, 'An open letter to the people of Raglan,' *The New Chronicle*, 13 November 2002. Waikato Regional Council File 60 66 83A Raglan Concertina folder (supporting papers #272)

- a requirement to undertake treatment and disposal of wastewater in accordance with a management plan to be approved by the Regional Council
- limits for concentrations of suspended solids, BOD5, and faecal coliforms in the discharge 3) a stipulation that treated wastewater is only to be discharged on ebb tides
- monitoring of quality, quantity, and variability of discharge and of effluent dispersion
- maintenance of a flow meter and records of discharge times and volumes
- provision of an analysis of environmental hazards and contingency plans associated with potential discharges of wastewater
- keeping a complaints register
- provision for review of the conditions.⁴⁴⁴

The decision addressed the obligations that the WDC had to tangata whenua in relation to the New Zealand Coastal Policy Statement, the Waikato Regional Policy Statement, the (Proposed) Waikato Regional Coastal Plan, and the RMA. Tainui Hapu had criticisms of the WDC and its predecessor, the RCC, in their submissions but the Court held that since they related to past events they were not relevant to the judgement made.⁴⁴⁵

Tainui Hapu opposition centered on the premise that any effluent, no matter how well treated, would be unsuitable for kai moana. ‘It was the appellants’ case that the discharge of human waste to their ancestral water is inconsistent with tikanga Maori, and offensive to them. The enhancement of the quality of treatment would not mitigate that. It would not be tika for them to gather fish and shellfish from the harbour, and this would deprive them of a traditional source of food for customary use; and deprive them of [the] opportunity to offer hospitality to other tribes, resulting in loss of mana.’

⁴⁴⁴ Judge DFG Sheppard, *Tainui Hapu and others v. Waikato Regional Council and Waikato District Council*, April 2004. Decision No. A063/2004, <http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZEnvC/2004/156.html?query=Tainui%20Hapu>, accessed 20 April 2013, p 3

⁴⁴⁵ *Ibid.*, p 12, 16-21

The Court held that although the provisions contained in the various National and Regional Coastal Policy Plans and Statements and the RMA ensured that consideration needed to be given to kaitiakitanga and the Principles of the Treaty of Waitangi, this did not give Tainui Hapu a right of veto over the proposed sewage system. The Court found that the WDC had recognised Tainui Hapu's role as kaitiaki by:

- prolonged consultation with Tainui Hapu
- by taking their views into account in developing the proposal (including a thorough investigation of alternatives to disposal to the harbour which offended Tainui Hapu)
- by abandoning the proposal for a new harbour outfall
- by adopting high discharge-quality standards, including shellfish-gathering quality in respect of faecal coliforms
- by agreeing to restore the taniwha's lair to a design on which the Hapu would be consulted
- by incorporating a wetland component in the treatment plan
- by conditions to avoid disturbance of sites of spiritual or cultural significance
- by protocols for dealing with any discovery of archaeological remains
- by providing for Tainui Hapu to have ongoing roles in the development and review of the management and contingency plans and in the effects assessment.

The Court also found that the WDC had not breached the Principles of the Treaty of Waitangi because it had actively consulted with tangata whenua and had made attempts at investigating alternative forms of waste disposal.⁴⁴⁶ The Court felt that the water in the harbour was more contaminated from agricultural run-off and other sources rather than the sewage system.⁴⁴⁷ While wastewater was going to be treated to a higher degree than previously there were still fundamental concerns from supporters of the system such as a water quality scientist from the Waikato Regional Council. He wrote in his submission:

⁴⁴⁶ Ibid., 39-43
⁴⁴⁷ Ibid., 44

[I] consider that although the wastewater is highly-treated such that it is unlikely to cause the shellfish-gathering guideline to be exceeded, it would be prudent to discourage shellfish-gathering within 200 metres of the discharge point. I consider it would also be prudent to discourage swimming within this zone.⁴⁴⁸

The consent to discharge was approved for an additional 15 years. There were four consents issued in total. On 14 February 2005 the Environment Court granted to the WDC resource consents related to the construction of a new treatment site (971388 and 971389) and the discharge of wastewater into Raglan Harbour (971390). The Court also issued resource consent 971391 for the retention of an existing wastewater treatment outfall pipeline below Mean High Water Springs on the Raglan Harbour bed, to enable the discharge of treated wastewater to the Raglan Harbour mouth; and consent 971392 for the regulation of odour to air associated with all aspects of the existing and proposed treatment system.

Mutually exclusive positions had been adopted by the local authorities (WDC & and) and tangata whenua and other Pakeha objectors which made compromise and a balancing of interests very difficult. Tangata whenua could not compromise without endangering the coherence and exercise of important aspects of their culture (kaitiakitanga and mauri). The local authorities did not face this precise cultural difficulty and expressed their concerns more in terms of economics and practicality.

3.3 Consent monitoring from 1999-present

The consents approved in 1994 and set to expire in mid-1998 remained in place until 2005 as a result of the series of consultative groups, working parties and Environment Court hearings. It is unclear if any monitoring took place between January and June 1999. The monitoring data from July 1999 to May 2000 was incomplete and many of the dates and figures were wrong on the graphs supplied by WDC to the WRC. It seems that non-

⁴⁴⁸ 'Evident of William Nesbit Vant,' RMA 305/99. Waikato Regional Council File 60 66 83A Concertina Folder (supporting papers #273)

compliance was more common than not. A sewage audit was conducted by the WRC in January 2000. It noted that the WDC had complied with conditions (a), (b), (c), (e), (i), (k) and (l) and only partially complied with condition (f). Perhaps two of the most important conditions, (g) and (h) related to the environmental monitoring programme, and had still yet to be complied with.⁴⁴⁹

During construction work on the oxidation ponds and drains in March 2000 WDC workers had caused an accidental break in one of the drains that had caused a sewage spill into the Aro Aro inlet.⁴⁵⁰ The WDC had failed to acquire a resource consent for the works and to inform the WRC of the spill. Complaints were received from Whaingaroa Harbour Care groups as well as local Maori. The WRC laid out the different factors that led to the spill:

The basis for these complaints was due to extensive disturbance of a natural coastal wetland area including potential impact to marine life. In addition staff consider the drainage works should have had prior resource consent approval that would have facilitated communication with the various interest groups. Although there is some reservation as to whether [the] Environment Waikato Council would in fact authorise such works in a unique marine wetlands area...The actual duration and volume of waste discharge into the waterway is not known. However, there was sufficient evidence to indicate that sewage had been entering the drain for some time. It is both disappointing and unfortunate that the District Council staff did not notify EW about the situation, no explanation was provided as why this did not happen....Essentially, Mr Bayly, was of the view [that] the wetland margin was part of the stormwater network as a flood gate weir is in place at the Aro Aro Bay road crossing therefore it was not considered coastal marine area. This was debated, as there is tidal water exchange in the wetland area via the weir system because the gate does not seal properly. This can also be supported by the different species of marine life that are present in [the] wetland zone...[T]he discharge had probably been occurring for some time due to accumulated sludges in the drainage channel.

⁴⁴⁹ 'Environmental Waikato Monitoring Report, Raglan Wastewater Treatment Plant,' Undated. Waikato Regional Council file 60 66 83Z Vol 1 (supporting papers #274)

⁴⁵⁰ RL Bayly to Urlwyn Trebilco, 28 March 2000. Waikato Regional Council file 60 66 83A Vol 8 (supporting papers #275)

The WRC recommended that the WDC erect a sign warning against shellfish consumption and recreational swimming.⁴⁵¹

Despite the on-going effect of the sewage spill in the mouth of Aro Aro Bay, the report to the Waikato Regional Council Regulatory Committee did not recommend any enforcement action against the WDC. The discharge of untreated sewage to a waterway is an offence in terms of Section 15 (1)(a) of the Resource Management Act (RMA). Section 340(2) of the RMA states that a defence against prosecution was available if the defendant did not know or could not reasonably be expected to have known about the offence and the report stated that the WDC could not have known about the spill until it was too late. The report made no mention of the fact that the WDC had failed to obtain a resource consent for the works that had caused the damage in the first place.⁴⁵² At the end of May 2000 over two and a half months after the spill, faecal coliform counts had returned to the same levels that existed before the spill.⁴⁵³

3.3.1 January 2002 Compliance Report

A compliance consent report was produced by the WRC in January 2002 for the Raglan Sewerage scheme. Overall it found a 'low level of non-compliance'. Conditions (a) – (c) and (k) – (l) were the only conditions that were fully complied with as in previous consents.⁴⁵⁴ Condition (d) stated that the 'instantaneous discharge rate shall not exceed 90 litres per second' but it could not be assessed as the data had not been supplied to the WRC. Condition (e), which related to the discharge only occurring on an outgoing tide was breached over a week long period between May and June 2001. The WDC discharged

⁴⁵¹ Colin Ferguson to Urlwyn Treblico, 23 March 2000. Waikato Regional Council file 60 66 83A Vol 8 (supporting papers #276)

⁴⁵² Group Manager Resource Use Group to Chief Executive Officer WRC, 20 April 2000. Waikato Regional Council file 60 66 83A Vol 8 (supporting papers #277)

⁴⁵³ Urlwyn Treblico to Waikato District Council, 30 May 2000. Waikato Regional Council file 60 66 83A Vol 8 (supporting papers #278)

⁴⁵⁴ Sheryl Roa, 'Consent Compliance Monitoring Report – Raglan Sewage,' 22 January 2002. Waikato Regional Council file 60 66 83Z Vol 2 (supporting papers #279)

wastewater continuously over seven days ‘due to increased pond levels as a result of heavy rain fall.’ It is unclear how the WDC would have been complying with condition (a) of their consent (to only discharge a maximum of 2600 cubic litres per day of wastewater) if they had discharged wastewater continuously for seven days.⁴⁵⁵

The operation and maintenance of the treatment system was the subject of condition (f) and it was the only condition for WDC that was described as ‘medium priority non-compliance’ rather than ‘low priority non-compliance’. Although the WDC had supplied some daily discharge data to the WRC for the period from late October 1999 to late July 2001, data that covered the December 1999 to June 2000 period and the late July 2001 to January 2002 period was not supplied. Furthermore a report was to have been furnished by the WDC regarding their discharges and treatment system that had not been received by the WRC since October 1997. The WRC asked the WDC for the missing data ‘and a report that addresses the requirement of this condition.’⁴⁵⁶

Condition (g) related to the monitoring programme and it remained in draft form and unimplemented. The WRC stated that ‘the process of resolving the issue of monitoring appears to have been stalled during the application process for the new consents.’ This would have been cause for a high priority non-compliance rating but the WDC had been monitoring for contaminants that were not required by their resource consent in the meantime so the WRC provide a less critical rating. Condition (i) related to the investigation of alternative options for the disposal of wastewater. While the WDC was investigating some options as part of the Raglan Wastewater Working Party process, the annual report that was part of condition (i) was never supplied to the WRC.⁴⁵⁷

⁴⁵⁵ Ibid. (supporting papers #279)

⁴⁵⁶ Ibid. (supporting papers #279)

⁴⁵⁷ Sheryl Roa, ‘Consent Compliance Monitoring Report – Raglan Sewage,’ 22 January 2002. Waikato Regional Council file 60 66 83Z Vol 2 (supporting papers #279)

3.3.2 Tidal monitoring equipment fault 2003

In early February 2003 the WDC was informed by a Raglan resident that the automatic pumps were discharging wastewater too early before the top of the tide. After an investigation of the system it was revealed that the system was malfunctioning. For five days between late January 2003 and early February 2003, the discharges were occurring before the tide because the monitoring equipment needed replacement.⁴⁵⁸ As a result the WDC had been manually controlling the pumps to ensure that discharges would only occur according to the details of the consent. From 14 February to 16 February 2003 WDC staff had forgotten to manually control the pumps and discharges were again released at incorrect times.⁴⁵⁹ The WRC then asked the WDC to furnish discharge data to show that those were the only dates in which conditions of the resource consent had been breached.⁴⁶⁰ By late April 2003 it was still unclear to the WRC how many times the WDC had breached its resource consent by discharging outside of the consent limits and whether a new tidal monitor had been installed.⁴⁶¹

3.3.3 April 2003 Compliance Report

The Raglan sewage system compliance report for 2002 was rated by the WRC as significantly non-compliant for their consent. As with the previous report conditions (a) – (c) and (k) – (l) were complied with.⁴⁶² The instantaneous discharge data was still not being provided by the WDC to the WRC so condition (d) could still not be assessed. Condition (e) was described as ‘medium priority non-compliance’ as the WDC had on a number of occasions discharged wastewater outside of its consent limits. Condition (f) stated that the

⁴⁵⁸ Lou Larsen to WRC, 11 February 2003. Waikato Regional Council file 60 66 83Z Vol 2 (supporting papers #280)

⁴⁵⁹ Sheryl Roa to Harry Wilson, 19 February 2003. Waikato Regional Council file 60 66 83Z Vol 2 (supporting papers #281)

⁴⁶⁰ Sheryl Roa to WDC, 17 February 2003. Waikato Regional Council file 60 66 83Z Vol 2 (supporting papers #282)

⁴⁶¹ Sheryl Roa, ‘Consent Compliance Monitoring Report – Raglan Wastewater Treatment Plant,’ 22 April 2003. Waikato Regional Council file 60 66 83Z Vol 2 (supporting papers #283)

⁴⁶² Ibid. (supporting papers #283)

WDC would ‘maintain a record of treatment system operations’ and it was described by the WRC as ‘high priority non-compliance.’ Daily discharge data had not been supplied to the WRC since late July 2001 and a report related to condition (f) had not been received since October 1997.⁴⁶³

As in previous reports, condition (g) related to the monitoring programme was still at ‘low priority non compliance’ because while a monitoring programme had never been finalised the WDC was monitoring for some contaminants outside of its consent. Condition (h) related to the results of the monitoring programme and, as a programme was not in place, condition (h) had repeatedly not been complied with. Alternative options for disposal was the subject of condition (i) and while the Raglan Wastewater Working Party had looked at some options the WRC had never received an annual report from the WDC about the results of the investigations.⁴⁶⁴ The WRC asked for the years of missing data and reports as well as confirmation that a new tidal monitor had been installed. Despite significant non-compliance there was no enforcement action taken.⁴⁶⁵

3.3.4 May 2003 discharges outside consent limits

From 24 May 2003 to 23 June 2003 the WDC discharged wastewater outside the consent limits due to excessive rainfall. The WDC discharged outside the limits ‘pursuant to Section 330 of the Resource Management Act.’ The WRC had some problems with the lack of complete data provided, the time it took the WDC to inform the WRC of the discharge and the rationale for using Section 330. Sheryl Roa of the WRC wrote to the WDC:

As the data supplied only goes up to 10 June 2003 I am unsure if the discharge is still operating outside of the specified consent limits. Please notify the Regional Council immediately of the expected date the discharge will be complying with the consented time limits...If you are discharging more treated

⁴⁶³ Ibid. (supporting papers #283)

⁴⁶⁴ Sheryl Roa, ‘Consent Compliance Monitoring Report – Raglan Wastewater Treatment Plant,’ 22 April 2003. Waikato Regional Council file 60 66 83Z Vol 2 (supporting papers #283)

⁴⁶⁵ Ibid. (supporting papers #283)

effluent over the time period will you exceed your current consented discharge volume limit of 2600 cubic metres per day? Environment Waikato accepts that the rainfall in preceding weeks, was unusually high, and likely exceeded the design capability of the Raglan WWTP. However, I consider that Section 330 is not available to the District Council for this type of incident. Section 330 is intended to protect local authorities who undertake emergency works, in the greater interest of the environment and the community. However, the District Council, at the Raglan WWTP, did not undertake emergency works during the heavy rainfall – the treatment ponds simply overflowed due to excessive inflow. *Notwithstanding this, although the overflow appears to be a breach of resource consent 900358, condition (e), in that the discharge occurred outside of the consent limits, at this stage Environment Waikato does not intend to take any enforcement action under the circumstances.* [emphasis added] I note that the time taken from the first breach of consent (being 23 May 2003) and notification to the Regional Council (on 11 June 2003) was well over two weeks. Also Regional Council staff were on-site at the Raglan WWTP, on Wednesday 28 May 2003, with District Council staff and this issue was not brought to the attention of Regional Council staff. In the future it would be appreciated if any breaches of consent were notified to the Regional Council in a more timely manner.⁴⁶⁶

3.3.5 May 2004 Compliance Report

The 2004 compliance report was nearly identical to the 2003 compliance report—both were rated by the WRC as ‘significant non-compliance.’ Conditions (a) – (b) and (k) – (l) were rated as fully compliant. Condition (i) which related to alternative disposal options had been catered for to some degree by the new resource consents being sought by the WDC for the upgraded sewage system. Conditions (e) –(h) were still in various phases of non-compliance as the WDC continued to discharge wastewater outside of the consent limits, did not provide a report on the state of the treatment system to the WRC, had no official monitoring programme in place and thus no results. The WRC requested that the WDC provide details of its discharges outside of the consent limits in February 2004 for which the WRC had received no information; reports years overdue for the state of the treatment

⁴⁶⁶ Sheryl Roa to WDC, 12 June 2003. Waikato Regional Council file 60 66 83Z Vol 2 (supporting papers #284)

operation; and data detailing the instantaneous rate of discharge that had not been received for years.⁴⁶⁷

3.3.6 June 2004 pumping outside consent limits

From 18 to 24 June 2004 the WDC pumped wastewater outside the consent limits for approximately eight hours per day due to heavy rain. According to the WDC, ‘the discharge was undertaken pursuant to Section 330 of the RMA in order to prevent overtopping and likely damage to the pond embankments.’⁴⁶⁸ Once again the WRC had concerns with this use of Section 330 for a situation in which ‘the treatment ponds simply overflowed due to excessive inflow.’ The WRC Resource Officer noted ‘that a similar discharge outside the consent limit regularly occurs at this time of the year at the Raglan WWTP.’ The WRC again did ‘not intend to take any enforcement action under the current circumstances’ but informed the WDC that ‘once the upgrade to the Raglan WWTP site is completed a more rigorous assessment of the District Council’s continued use of S330 is likely to occur.’

3.3.7 Response by WDC to significant non-compliance

The Community Assets Group Manager at WDC wrote to the Resource Officer at WRC to rationalise the WDC’s repeated breaches of their resource consent by pointing to stormwater infiltration issues:

Your inspections during 2002-2003 and again in 2003-2004 resulted [in the WDC] being given a rating of significant non-compliance. This is due to the influence of stormwater infiltration during heavy rain events and an expanding population have required the discharge of effluent outside of the consented times of discharge on several occasions. You have been advised of such emergency discharges on every occasion to ensure that ponds do not overtop. The Council is actively engaged in investigating and developing strategies to eliminate stormwater infiltration to the wastewater collection system, which will eventually reduce such discharges. The new consent that is granted after the environment court hearing has given more flexibility to the Council by

⁴⁶⁷ Sheryl Roa, ‘Consent Compliance Monitoring Report – Raglan Wastewater Treatment Plant,’ 4 May 2004. Waikato Regional Council file 60 66 83Z Vol 2 (supporting papers #285)

⁴⁶⁸ Lou Larsen to Sheryl Roa, 28 June 2004; Sheryl Roa to Lou Larsen, 29 June 2004. Waikato Regional Council file 60 66 83Z Vol 2 (supporting papers #286)

allowing extended hours of discharge to the estuary and emergency discharges.⁴⁶⁹

The WDC stated that ‘the data suggests that the site is having no more than a minor adverse environmental impact.’⁴⁷⁰ Tangata whenua and other Raglan residents felt otherwise.

The WDC tried to point to stormwater infiltration and the breaching of consent (d) (that related to time limits for discharge) as the only reason for their rating of significant non-compliance, but there were other conditions that were consistently breached. These related to reports and data on the treatment system’s condition and maintenance and an official monitoring programme. Additionally the breaching of condition (d) also occurred during the dry summer months as had occurred in February 2004. A more concerning aspect of the WDC’s justifications was the proposed reliance in the new resource consent on ‘more flexibility to the Council by allowing extended hours of discharge to the estuary and emergency discharges’. Perhaps the new resource consent should have been predicated on structural solutions to the need for continual and consistent emergency discharges rather than formalising the exceptions to the previous consent.

3.3.8 The 2005 Abatement notice

In late January 2005 a Raglan resident called the WDC’s Raglan Office to complain about sewage discharges on the incoming tide. ‘When the resident reported the discolouration, she was told by the Raglan staff that this was due to brown algal blooms that were prevalent in the harbour at the time.’ On 14 February 2005 the WDC received another complaint about a discharge on the incoming tide. The electronic system that measured the tides had malfunctioned again and the WDC’s contractors were contacted to fix the fault. A new electronic tidal almanac that controlled the pumps was installed on 15 February 2005.

⁴⁶⁹ WDC Community Assets Group Manager to WRC Resource Officer, 12 October 2004. Waikato Regional Council file 60 66 83Z Vol 2 (supporting papers #287)

⁴⁷⁰ ‘Raglan Wastewater Treatment System,’ 1 September 2004. Waikato Regional Council file 60 66 83Z Vol 2 (supporting papers #288)

Nonetheless on 16 February 2005 another Raglan resident complained about continuing discharges on the incoming tide. The WRC asked the WDC to provide it with their discharge data for the January and February 2005 period. This data confirmed that the WDC had discharged wastewater on ‘various incoming tides over the 26/01/05 to 20/02/05 period...ranging in duration from 11 minutes up to 3 hours and 29 minutes.’ The WDC believed that the actual cause of the fault rather than the pumps that had been installed may have been ‘the activation of a programme override switch and tidal almanac settings’ remaining from the previous winter.⁴⁷¹

This incident had been the third year in a row in which discharges had occurred on the incoming tide in non-compliance with their consent conditions due to technical issues. After discussions within the WRC an abatement notice was served on the WDC on 28 February 2005. The abatement notice was issued under Section 322(1)(a)(i) of the Resource Management Act 1991 for contravention of Section 15(1)(a) of the RMA. The notice stated:

In particular [the WDC] discharged treated wastewater into the Raglan Harbour from the Raglan wastewater treatment plant on a number of incoming tides, over the 26 January 2005 to 20 February 2005 period, when that discharge is not expressly allowed by a rule in a regional plan, any proposed regional plan, a resource consent, or regulations. Discharging on the incoming tide is not permitted by resource consent number 900358. Further discharging on the incoming tide is not permitted by resource consent number 971390, granted by the Environment Court on 14 February 2005, ‘other than for half an hour before high tide and immediately after extreme weather.’ The discharge of treated effluent on an incoming tide has an adverse environmental and social affect on users of the Raglan Harbour.⁴⁷²

The Chief Executive of the WDC wrote to the WRC that the abatement notice was unnecessary and was not accepted by the WDC. Discussions were to take place between the

⁴⁷¹ Sheryl Roa, ‘Background to Raglan Abatement Notice.’ Waikato Regional Council file 60 66 83Z Vol 2 (supporting papers #289)

⁴⁷² ‘Abatement Notice under Section 322 of the Resource Management Act 1991 to Waikato District Council,’ 28 February 2005. Waikato Regional Council file 60 66 83Z Vol 2 (supporting papers #290)

Chief Executives of both the WDC and WRC to consider the abatement notice.⁴⁷³ It is unclear from the archives consulted whether the notice was ever appealed but it remained in place until at least September 2005.

The WRC Resource Officer contacted Angeline Greensill to explain ‘what the Regional Council’s understanding was of the recent discharges on the incoming tides and further as a result an abatement notice was issued on Monday 28 February 2005 requiring the District Council to stop discharging on the incoming tide.’ The Resource Officer had also been in contact with an official from the Waikato District Health Board who had become aware of the discharges’ effects on residents from a local Raglan GP. The West Coast Medical Centre had noticed an increase in skin infections in surfers.⁴⁷⁴

The WDC’s monitoring results in September 2005 stated that the abatement notice should no longer be in force. ‘There have been no further significant non-compliances from the site, however the abatement notice has not been withdrawn. A review of the data indicates compliance with the water quality parameters and the discharge to be having no more than a minor environmental impact. The Regional Council was advised on a number of occasions when it was necessary to discharge effluent on the incoming tide due to heavy rain events.’⁴⁷⁵

3.3.9 New Resource Consents, February 2005

As has been previously stated on 14 February 2005 the Environment Court granted to the WDC resource consents related to the construction of a new treatment site (971388 and 971389), the discharge of wastewater into Raglan Harbour (971390), the retention of the

⁴⁷³ WDC Chief Executive to WRC Chief Executive, 3 March 2005. Waikato Regional Council file 60 66 83Z Vol 2 (supporting papers #291)

⁴⁷⁴ Sheryl Roa, ‘File Note of Phone Conversation...’, 2 March 2005. Waikato Regional Council file 60 66 83Z Vol 2 (supporting papers #292)

⁴⁷⁵ WDC, ‘Raglan Wastewater Treatment System,’ 20 September 2005. Waikato Regional Council file 60 66 83Z Vol 2 (supporting papers #293)

existing discharge pipe (971391) and the regulation of odour from the treatment site (971392). Consent 971390 had a number of conditions:

Figure 14: Table of conditions of consent 971390

Condition Number	Description
1	That the new system be constructed, operated and maintained in accordance with the reports on the assessments of environmental effects undertaken in 1998 and 2002.
2	That suitable fencing would be installed to ensure livestock are unable to access the site.
3	The new treatment system would be built in accordance with accepted civil engineering practices.
4	That the WRC would be provided with a management plan to detail the procedures that would be put in place to avoid the potential for any adverse effects on the harbour. This would include at a minimum a description of the entire treatment system, routine maintenance procedures, a monitoring programme, contingency measures in place for extreme and unusual events and any other actions necessary to comply with the requirements of the resource consent. This condition had a specific emphasis on the importance of consultation with tangata whenua.
5	Provided for the review of the treatment site every two years until 2014.
6	A contingency plan that assesses the environmental hazards associated with the discharge of wastewater.
7	That a complaint register regarding all aspects of the treatment system and discharge be kept.
8	Allowed for the WRC on the fifth anniversary of the consent and every year following the five year anniversary to review the maximum discharge volume.
9	For the installation of a water flow meter to record the quantity of wastewater discharged on a cumulative basis per tidal period and condition 10 was for a record of the data.
10	A record of the daily volume of discharge data.
11	‘The discharge of treated wastewater shall occur for a maximum of 5.5 hours per outgoing tide. The discharge may commence no earlier to 0.5 hours before high tide and shall cease no later than 1 hour before low tide. Provided that for not more than 20 days per year immediately after extreme weather, pumping hours may exceed that maximum discharge duration of 5.5 hours per tide.’
12	Instructed the WDC to maintain a record of the date and time each discharge cycle commences and finishes.
13	There would be no discharge of oil, grease or persistent surface foam.
14	Suspended solids do not exceed a certain level.
15	BOD5 level do not exceed a certain level.
16	Faecal coliforms do not exceed a certain level.

Condition Number	Description
17	Concentration of enterococci do not exceed a certain level.
18	The WDC to provide the WRC a monitoring report annually.
19	The WDC to notify the WRC of any breaches of the conditions in the consent and any accidental discharges within 24 hours.
20	The WDC to maintain a register of all incidents notified in condition 19.
21	That the WDC to provide the WRC by the fifth anniversary of the granting of the consent an Effects Assessment Report.

3.3.10 May 2005 consent compliance report

The first consent compliance report produced after the granting of new resource consents for the Raglan Wastewater Treatment plant in early 2005 had the same result as the two previous compliance reports—an overall rating of significant non-compliance. A number of conditions and consents in general were not assessed because on-site works associated with the consents had not yet commenced or reports were not yet due as only three months had passed since the granting of the consent.⁴⁷⁶ The physical works associated with resource consent 971388 were due to commence a few days after the compliance report was written. The earthworks management plan that was mandated by resource consent 971389 was approved by the WRC on time and as a result the WDC was fully compliant for consent 971389. Resource consent 971390 had a number of conditions that were not assessed for the reasons noted above but all the conditions that could be assessed were rated to various degrees of non-compliance except for one condition. Conditions 1, 3, 4, 5, 7, 14-18 and 20-12 were not assessed because reports were not due for either months or years. Resource consent 971391 was also not assessed. Resource consent 971392 which related to the regulation of odour was rated as fully compliant.⁴⁷⁷

The WDC responded to the compliance report a few days after it was produced. In a letter to the WRC they noted that a draft contingency plan (in line with condition 6) had been

⁴⁷⁶ Sheryl Roa, 'Consent Compliance Monitoring Report – Raglan Wastewater Treatment Plant,' 16 May 2005. Waikato Regional Council file 60 66 83Z Vol 2 (supporting papers #294)

⁴⁷⁷ Ibid. (supporting papers #294)

sent to Tainui Hapu and they were still awaiting a response. The flow meter (in line with condition 9) was in place. Finally the daily discharge volume data and discharge start and finish times were to be compiled and sent within the week.⁴⁷⁸

3.3.11 April 2006 consent compliance report

The WDC's level of compliance at Raglan in the 2005-2006 period remained at significantly non-compliant. Previously consent 971388 had not been assessed but in this report it was rated as partially compliant. This consent related to the installation of a culvert and diversion of an unexisting unnamed waterway. The WDC was only partially compliant as erosion within the waterway had occurred and sediment was entering into the waterway. The WDC had previously been fully compliant for consent 971389 but was significantly non-compliant a year later. Consent 971389 had more serious issues than consent 971388 concerning sediment controls and was rated as significantly non-compliant. Some of consent 971390's conditions (such as conditions 1, 3, 5, 7, 14-17, 19 and 21) remained un-assessed as the reports related to them were not yet due but overall the WDC was still significantly non-compliant for this consent. Due to heavy rainfall on 29 May 2005 and 14-17 July 2005 the WDC discharged wastewater outside the consent limit from 30 May to 3 June 2005 and 24 hours a day from 19-23 July 2005.⁴⁷⁹ The WDC's new consent allowed for up to 20 days per year immediately after extreme weather. Consent 971391 also remained un-assessed. Condition 971392 (for the regulation of odour) was rated as partially compliant since the management plan was due on 14 February 2006 and had still not been received.⁴⁸⁰ After the WDC provided the WRC with some of the data that was missing from the previous year's discharges there was a change of rating for condition 8 from fully compliant to partial non-

⁴⁷⁸ WDC Development Services Manager to WRC Resource Officer, 19 May 2005. Waikato Regional Council file 60 66 83Z Vol 2 (supporting papers #295)

⁴⁷⁹ WDC Operations Manager to WRC Resource Officer, 31 May 2005; WDC Operations Manager to WRC Resource Officer, 26 July 2005. Waikato Regional Council file 60 66 83Z Vol 2 (supporting papers #296)

⁴⁸⁰ Sheryl Roa, 'Consent Compliance Monitoring Report – Raglan Wastewater Treatment Plant,' 18 April 2006. Waikato Regional Council file 60 66 83Z Vol 3 (supporting papers #297)

compliance. A review of all the data supplied by the WDC had indicated non-compliance with maximum daily discharge volume of 2,600 cubic metres per day on 1-4 June 2005 and 19-21 July 2005.⁴⁸¹

3.3.12 Continuing problems with wastewater treatment site construction and sewage spills, 2006

Consents 971388 and 971389 remained seriously non-compliant as 2006 stretched on. In July 2006 enforcement action began to be discussed and contemplated within the WRC. One WRC official commented that he felt that the contractors working for the WDC had been consistently breaching its consents across the region:

I appreciate the sensitivity of any enforcement action at a site owned by a Territorial Authority. However, the direct management responsibilities lie firstly with OPUS and then with various contractors operating on site. In this instance, there is a history of serious non-compliance from the early stages of work, including abandonment of the site over the wet Christmas break when the controls were totally ineffective and discharging. They have all been warned many times and yet Consent Condition compliance is still a serious ongoing issue. I recommend that enforcement be carried out against OPUS as they have the responsibility to manage the Consent Conditions along with both Schicks and Fulton Hogan. Both contractors are contributing to the non-compliance issues at the site and regardless of the poor direction/management from OPUS, they all have a responsibility to operate within the Consent Conditions and prevent sediment discharges. I am also getting the impression that the non-compliance is a result of a lack of consistent enforcement such as has occurred at other Hamilton sites in recent times and that the contracts particularly have worked out that because the WDC is involved that enforcement is unlikely.⁴⁸²

The WRC Resource Officer did not recommend enforcement action for this incident but instead issued the WDC with a formal warning that enforcement action would be taken if

⁴⁸¹ WRC Resources Officer to WDC Community Assets Manager, 29 May 2006. Waikato Regional Council file 60 66 83Z Vol 3 (supporting papers #298)

⁴⁸² Steve Bryant to Hugh Keane, 21 July 2006. Waikato Regional Council file 60 66 83Z Vol 3 (supporting papers #299)

there was another breach of consent conditions on the same site.⁴⁸³ The WRC Resource Officer used the threat of enforcement action to get the contractors at the site to fix some erosion issues before the Christmas break 2006.

In late December 2006 one of the Raglan pump stations failed and a ‘substantial amount’ of untreated sewage had spilled directly into the harbour. This was estimated at approximately 5,000 cubic metres of untreated sewage over six days from 25-30 December 2006. The spill had occurred as a result of a number of different electrical faults at the pumping station. While a previous breach of the WDC’s consents due to electrical or technical faults had resulted in enforcement action in early 2005, this breach only resulted in a formal warning.⁴⁸⁴ In mid-March 2007 a sewer on Greenslade Road overflowed due to trees that had made their way into a partially buried manhole and blocked a 150mm sewer pipe. Under ten cubic metres of sewage had spilled into the foreshore.⁴⁸⁵

3.3.13 August 2007 consent compliance report

The WDC’s level of compliance in the 2006-2007 period had improved for the first time in four years from significant non-compliance to partial compliance. In the previous year’s report the WDC had been significantly non-compliant for consent 971389. This continued in the 2006-2007 period. There was poor maintenance of existing sediment controls in June, July and September 2006 that almost led to enforcement action and a management plan was not developed for the end of the project. Some of consent 971390’s conditions remained un-assessed as the reports related to them were not yet due such as conditions 1, 5, 14-17 and 21 but for the first time in three years consent 971390 was partially

⁴⁸³ WRC Resource Officer to Hugh Keane, 21 July 2006; WRC Utilities Programme Manager to WDC, 24 July 2006. Waikato Regional Council file 60 66 83Z Vol 3 (supporting papers #300)

⁴⁸⁴ ‘Call Number 21133,’ 30 December 2006; WRC, ‘Raglan WWTP Spill 2006/07,’ 24 January 2007; WDC Community Assets Group Manager to WRC, 31 January 2007; WRC Resource Officer to Enforcement Decision Group, 20 April 2007. Waikato Regional Council file 60 66 83Z Vol 3 (supporting papers #301)

⁴⁸⁵ WDC Community Assets Group Manager to WRC Resource Officer, 21 March 2007. Waikato Regional Council file 60 66 83Z Vol 3 (supporting papers #301)

compliant rather than non-compliant. Consent 971391 also remained un-assessed. Consent 971392 (for the regulation of odour) was rated as partially compliant since the management plan was due on 14 February 2006 and had still not been received over fifteen months later but all other aspects of this consent was satisfactory.⁴⁸⁶

3.3.14 2008 Abatement notice and complaints by Malibu Hamilton

In 2008 complaints were made against the WDC regarding erosion and sediment control and emergency discharges. In 2007 the WDC was provided with resource consent 118116 to decommission the old oxidation pond, divert a waterway around the treatment site and begin construction to strengthen the land around the harbour. In April 2008 repeated complaints were made by the public that erosion and sediment controls were ‘grossly inadequate’ and after inspections by the WRC two abatement notices were issued to the WDC by late April 2008. The immediate problems were cleared up quickly after the abatement notices were issued.⁴⁸⁷

In September 2008 Malibu Hamilton wrote to the WDC General Manager of Water & Facilities inquiring about sewage over flows. The General Manager’s responses are provided in *italics*.

I have noticed in the community board agenda that there have been pumps running outside the limits of the consent due to heavy rainfall and overtopping. From memory the consent condition states extreme weather conditions and not heavy rainfall.

1. Can you please explain, I have been told they operated for three days, 24/7? *I need to come back to you on the dates and duration of this.*
2. Can you also explain why overtopping is now an issue, particularly as the new ponds were meant to allow for extra storage? *The issue was not the capacity of the plant but the excessive stormwater infiltration into the*

⁴⁸⁶ WRC Resource Officer, ‘Consent Compliance Monitoring Report – Raglan Wastewater Treatment Plant,’ 9 August 2007. Waikato Regional Council file 60 66 83A Vol 13 (supporting papers #302)

⁴⁸⁷ WRC Resource Officer to WDC, 30 April 2008. Waikato Regional Council file 60 66 83A Vol 14 (supporting papers #303)

reticulation. We are starting to address this over the next 6 months, but it will be an ongoing process! This is a national issue, and there were many examples throughout the country of wastewater infiltration and plant capacity issues. I think we got off reasonably well.

3. Has WDC reported this incident to Dell Hood [District Health Board]? *Not on this occasion, but more than happy to in the future.*
4. Why hasn't WDC seen fit to advertise this in our local paper owing to contamination? *I think that to make this effective, that timing would be an issue. We will work out a public notification process with Dell – may be using radio.*

This has highlighted the issues of reporting as per the consent, perhaps you may wish to make changes to the consent as per sec 127 because of the shortfalls of the conditions. *Reporting to effected parties – community.* I have also spoken to [the WRC Resource Officer] on this issue. She explained that both of you have had a conversation on this matter and she is awaiting a report from Dell Hood as this is a health issue as well.⁴⁸⁸

It is unclear what steps were taken for a notification process as complaints were still being made by residents of Raglan regarding the lack of notification a year later.⁴⁸⁹ Fiona Edwards, the Chairperson of Whaingaroa Harbour Care, wrote to the Chairman of the WRC in October 2009 following another set of 'emergency' discharges outside the consent limits that occurred without public notification. Edwards asked the Chairman to make changes to the existing resource consent so that public notification was mandatory.⁴⁹⁰ There was the possibility of a review of the consents but this was only available during specific times and the next available review period was September 2010. The WDC could apply to change the consent conditions on its own. The WRC response to Edwards noted the limits of any options for forcing the WDC to issue public notifications:

Waikato Regional Council has approached Waikato District Council about this matter twice now and we have also spoken with Public Health. We have asked

⁴⁸⁸ Malibu Hamilton to WDC General Manager of Water & Facilities, 10 September 2008. Waikato Regional Council file 60 66 83A Vol 14 (supporting papers #304)

⁴⁸⁹ Fred Lichtwark to WDC, WRC and Waikato District Health Board, 12 October 2009. Waikato Regional Council file 60 66 83A Vol 14 (supporting papers #305)

⁴⁹⁰ Fiona Edwards to WRC Chairman, 12 October 2009. Waikato Regional Council file 60 66 83A Vol 14 (supporting papers #306)

Waikato District Council if they would voluntarily notify the community of the discharges. They have agreed to do so on a limited basis via an e-mail list but do not consider public signage is necessary based on feedback from Public Health. Unfortunately Waikato Regional Council does not have the ability to force either Waikato District Council or Public Health to erect signage.⁴⁹¹

3.3.15 March 2009 consent compliance report

The WDC's level of compliance in the 2007-2008 period had reverted back to significant non-compliance after being partially compliant for the first time. In the previous year's report the WDC had been significantly non-compliant for consent 971389 but it was not assessed in this reporting period as works were no longer taking place. Some of consent 971390's conditions remained un-assessed such as conditions 5 and 21. After being partially compliant for the first time the WDC was once again significantly non-compliant for consent 971390. The WDC received a rating of partial compliance for consent 971391 (maintaining a discharge structure) because erosion had exposed some breakable sections of the discharge pipe and nothing had been done to fix the pipe. Condition 971392 (for the regulation of odour) was rated as fully compliant despite a management plan being over three years late and the absence of a complaints register from the WDC's annual report for the Raglan treatment site. Consent 118116 for the decommissioning of the old oxidation pond was rated as significantly non-compliant as a result of grossly inadequate erosion and sediment controls. Two abatement notices were issued to the WDC regarding consent 118116 but they were cancelled after remedial works were completed.⁴⁹² Four spills had taken place in the 2007-2008 period with one incident in December 2007 and three incidents in July 2008 but they were all comparatively minor. Despite the rating of significant non-compliance only a formal warning letter was sent to the WDC rather than any enforcement action.

⁴⁹¹ WRC Resource Use Group Manager to Fiona Edwards, 2 November 2009. Waikato Regional Council file 60 66 83A Vol 14 (supporting papers #307)

⁴⁹² WRC Resource Officer, 'Consent Compliance Monitoring Report – Raglan Wastewater Treatment Plant,' 11 March 2009. Waikato Regional Council file 60 66 83A Vol 14 (supporting papers #308)

3.3.16 Land discharges at Te Kopua

In October 2009 the Programme Manager of the Tai-ranga-whenua unit (Iwi Relationships) at WRC wrote to the WRC Resource Officer inquiring about the possible land based treatment of wastewater at a Maori block of land, Te Kopua.

I was visited last week by Rick Aspinall and Aubrey Te Kanawa. They have a very interesting environmental concept that I believe will be conducive to some of your work programmes in RCS. WDC currently pipes treated wastewater in Raglan across their block of Maori Land and out into the estuary. They would like to retire a significant area of land for planting. They would like to explore the idea of using the treated waste water to irrigate the plants that will be grown to a specific stage before they are harvested and made available for riparian planting initiatives, and the area is then replanted again. They are excited with the potential benefits to the water quality in the Raglan Harbour in that a large volume of treated water will undergo a further filtration and purification process before entering the estuarine ecosystem.⁴⁹³

This message was passed on to the WRC Resource Officer who questioned the validity of the proposed project.

This would be a ‘civil’ agreement between iwi and Waikato District. I’m not even sure if the marae could undertake irrigation of plants without getting a discharge consent themselves. The best I can suggest is that Rick and Aubrey contact Richard Bax at Waikato District Council. I wouldn’t have thought this was the sort of thing we (WRC) would get involved in – at least not until they know whether or not they will be discharging to ground.⁴⁹⁴

It is unclear why this was not ‘the sort of thing’ WRC got involved in.

3.3.17 April 2010 spill and June & September 2010 emergency discharge

The pattern of sewage spills and emergency overflows continued in 2010. In late April 2010 there was a sewage spill as a result of a broken pipe. Once the broken pipe had been discovered it was fixed relatively quickly but eventually it was revealed that the pipe

⁴⁹³ WRC Tai-ranga-whenua Programme Manager to Therese Balvert, 9 October 2009. Waikato Regional Council file 60 66 83A Vol 14 (supporting papers #309)

⁴⁹⁴ WRC Resource Officer to Therese Balvert, 15 October 2009. Waikato Regional Council file 60 66 83A Vol 14 (supporting papers #310)

had been broken for a number of days and possibly weeks.⁴⁹⁵ Due to high levels of rainfall the WDC made an emergency discharge in late June 2010.⁴⁹⁶ There was limited public notification except for the media release and a public notification displayed on the WDC Raglan Office. No signs were placed around the discharge points in the harbour.⁴⁹⁷ In September 2010 when due to heavy rainfall the WDC planned another emergency discharge the WRC recommended against it:

I would avoid if at all possible pumping outside of normal pumping hours, given the interest/concern that this has generated in the past from Raglan stakeholders. I would recommend you check the provisions of discharge consent 971390 (condition 11), which does authorise continuous pumping outside of normal hours due to ‘extreme weather’ – WDC would have to be satisfied that the current situation constitutes ‘extreme weather’. The weather forecast for the Waikato this week is not ideal – more rain throughout the week. Section 330 (emergency works provision) of the RMA would not be appropriate as these connection works are planned improvements to the WWTP – i.e. it is not an unforeseen event.⁴⁹⁸

In May 2010 the WDC began posting the results of its Raglan resource consent compliance results on the internet. Malibu Hamilton commented that although the information was helpful it showed that ‘WDC are still potentially having issues with ongoing compliance and shows.’ He questioned what had been the effect of the removal of the anaerobic ponds from the treatment process? The WDC Plants Engineer replied:

We only stopped the anaerobic ponds to avoid nuisance odours over the Christmas-New year period. However we restarted flows to them in Feb/Mar and have been trying to get reliable odour-free operation since by trying various actions. In general the summary data on the website for the 2009-2010 Q1-Q3 (July 2009 to March 2010) shows our discharge results are really quite good for micro results and BOD. Suspended solid targets remain hard to

⁴⁹⁵ Hugh Keane to Brett Fletcher, 16 April 2010; WDC to WRC, 26 April 2010: Waikato Regional Council file 60 66 83A Vol 14 (supporting papers #311)

⁴⁹⁶ WDC, ‘Unscheduled discharge of treated wastewater,’ 23 June 2010. Waikato Regional Council file 60 66 83A Vol 15 (supporting papers #312)

⁴⁹⁷ WDC Communications Advisor to WRC Resource Officer, 23 June 2010. Waikato Regional Council file 60 66 83A Vol 15 (supporting papers #313)

⁴⁹⁸ WRC Programme Manager Infrastructure to WDC Plants Engineer, 13 September 2010. Waikato Regional Council file 60 66 83A Vol 16 (supporting papers #314)

achieve and algae in the roadside holding pond appears to be a major contributor to this.⁴⁹⁹

3.3.18 Pipeline maintenance, mid-2010

In June 2010 the WDC conducted maintenance on the discharging pipeline that runs through Maori land, Te Kopua 3 and 4. Angeline Greensill, as the mandated Tainui hapu environmental spokesperson, was not contacted for a meeting prior to the activity taking place. She wrote to the WDC to express her concern about the lack of consultation:

I attended our monthly marae meeting on Sunday to be told that drains have been dug and pipes installed at Te Kopua. Following the hui I visited the site and noted that most of the pipes have been laid...Given the fact Tainui Hapu are listed under section 35A RMA for notification purposes, why didn't we receive a copy of what was proposed? Have the contractors got a consent to enter to carry out work on Te Kopua 3 & 4 land? Which survey plans are WDC contractors working off? What are the pipes for? If they are for stormwater then how will erosion caused by scouring be mitigated at point of entry and by whom? Given that the discharge is still not consistently meeting sea food gathering standard, money would have been better spent dealing with improving water quality rather than installing pipelines through Maori land without consent at this time. Before I even respond to the Draft Wastewater Management Plan which I received today, I require answers to the above questions and an agreement that such oversights will not occur again.⁵⁰⁰

The WDC General Manager of Water & Facilities replied to Greensill that he had tried to contact her previously regarding the project:

The pipes you have seen on the roadside are part of the replacement of the discharge pipe. I presented this and showed the plans to hui at Poihakena marae back in November 2009. As you see from the email, I had also offered to provide an update but didn't receive a response. 2 other hui that I offered to attend have been postponed, back in May due to a claims hearing and again on 12 June. The contractors do not need to access Te Kopua land for this work as all the pipes are beside the road. Angeline as always I'm happy to meet and discuss the project – please let me know where and where.⁵⁰¹

⁴⁹⁹ Malibu Hamilton to WDC, 31 May 2010; WDC Plants Engineer to Malibu Hamilton, 31 May 2010. Waikato Regional Council file 60 66 83A Vol 14 (supporting papers #315)

⁵⁰⁰ Angeline Greensill to WDC Plants Engineer and others, 14 June 2010. Waikato Regional Council file 60 66 83A Vol 15 (supporting papers #316)

⁵⁰¹ WDC General Manager of Water & Facilities to Angeline Greensill, 14 June 2010. Waikato Regional Council file 60 66 83A Vol 15 (supporting papers #317)

Angeline Greensill disagreed that proper consultation had taken place and that the pipeline ran through a road reserve and not Maori land at Te Kopua:

The emails you have sent are unhelpful in this case. I am aware that Aubrey Te Kanawa, secretary of Te Kopua 2B3 Incorporation is investigating options for papakainga housing on the land they administer. The fact is I am the mandated environmental spokesperson for Tainui hapu, have dealt with issues including sewerage for the past 30 years (see <http://www.tkm.govt.nz/iwi/Waikato#>) and require answers to the matters raised. I saw no boundaries pegged in my visit on Sunday and believe that the pipeline is being installed on Te Kopua 3 & 4 land not in the road reserve (SO 42266) therefore infringing on our property rights and pa zone. I have put aside time next Thursday afternoon to meet with Hudson re the draft wastewater management plan and have copied others into this email who have responsibility in what has taken place. I look forward to your response.⁵⁰²

A meeting took place between the WDC and Tainui hapu on 24 June 2010 at the Whaingaroa Ki te Whenua Trust Building in Raglan. On behalf of tangata whenua Angeline Greensill, Tainui Hapu and Te Kopua 3 & 4 landowners and Malibu Hamilton attended. Five representatives of WDC and one representative from WRC attended. While minutes of the meeting were not found in any archives, an agenda for the meeting was produced. It stated:

1. **Explanations of what wastewater projects WDC are currently undertaking**
2. **Outfall discharge pipe replacement project update**
3. **Draft Communications Plan – Raglan** Opportunity for Tainui Hapu to comment on WDC communications plans
4. **Report on first five years of Raglan WWTP operation** AWT effects report Resource Consent 971390, condition 21) i) iii) iv)
5. **Draft Raglan WWTP Management and Contingency Plan for consideration** Opportunity for Tainui Hapu to comment as per resource consent 971390, conditions 4 and 6
6. **Discussion of acceptability of discharge to local Tainui Hapu** As per resource consent 971390, condition 21) ii)⁵⁰³

⁵⁰² Angeline Greensill to WDC General Manager of Water & Facilities, 14 June 2010. Waikato Regional Council file 60 66 83A Vol 15 (supporting papers #318)

⁵⁰³ 'Meeting between Waikato District Council & Tainui Hapu,' 24 June 2010. Waikato Regional Council file 60 66 83A Vol 15 (supporting papers #319)

3.3.19 June 2010 consent compliance report

The WDC's level of compliance in the 2008-2009 period remained overall at significant non-compliance. The WDC was once again significantly non-compliant for consent 971390. After receiving a rating of partial compliance for consent 971391 (maintaining a discharge structure) in the previous reporting period, the WDC were fully compliant in this period. Condition 971392 (for the regulation of odour) was previously rated as fully compliant but was now at a high level of compliance. The WRC was rated as fully compliant for a new consent, 118116, for earthworks around the treatment system. The WDC were issued with a formal warning in respect of significant non-compliance specifically for discharging outside of the consent limits. This followed on from a second formal warning that was issued by the WRC to the WDC on 9 April 2009 for breaching a different aspect of consent 971390.⁵⁰⁴

3.3.20 November 2011 consent compliance report

For the first time in three years the WDC's level of compliance was rated overall at partial compliance. While this was still deemed to be unsatisfactory by the WRC it was only the second time in over ten years that the WDC was not rated as significantly non-compliant. The WDC received a rating of partial compliance for consent 971390 after being significantly non-compliant for a number of years. The other two resource consents, 971391 and 971392, were rated as fully compliant. The WRC issued the WDC with a letter of direction to instruct them on how to improve their level of compliance but no formal warning letter was sent.⁵⁰⁵

3.3.21 November 2012 consent compliance report

After reaching a level of partial compliance in 2011 the WDC was rated overall for its Raglan treatment site at a high level of compliance in 2012. Consent 971390 was rated at

⁵⁰⁴ WRC Resource Officer, 'Consent Compliance Monitoring Report – Raglan Wastewater Treatment Plant,' 11 June 2010. Waikato Regional Council file 60 66 83A Vol 14 (supporting papers #320)

⁵⁰⁵ WRC Resource Officer, 'Consent Compliance Monitoring Report – Raglan Wastewater Treatment Plant,' 4 November 2011. Waikato Regional Council file 60 66 83A Vol 16 (supporting papers #321)

high level of compliance for the first time in the short history of the Raglan sewage system dating back to the 1970s. Consents 971391 and 971392 were rated as fully compliant.⁵⁰⁶

3.3.22 June 2013 sewage spill

After receiving a high level of compliance rating in 2012, the stormwater overflow issues that had plagued the Raglan Wastewater Treatment Plant returned. In June 2013 approximately 5,000 cubic metres of ‘partially treated’ sewage was released into a tidal estuary of Raglan Harbour, although it is unclear exactly which estuary. At the time of the second draft of this report (July 2013) the WDC and WRC’s separate investigations had not been completed into the spill. The WDC has released a media statement which noted that a ‘number of factors were found to have contributed to the overflow including the failure of the discharge pumps to start operating and a lack of telemetry alarms in the event of a pump failure.’ The author has made attempts to access information regarding the spill but as the WRC and WDC’s investigation is on-going the author was not provided with any files.⁵⁰⁷ In December 2013 the WRC completed its investigation and filed a ‘single charge of discharging a contaminant into the environment under the Resource Management Act 1991’ in the Hamilton District Court. Court proceedings were likely to place sometime in the first half of 2014.⁵⁰⁸

3.3.23 Effects of sewage system on neighbouring Maori landowners

Tangata whenua around Raglan have complained about the effect of the sewage system on the environment and subsequently also on the economic value of lands directly adjacent to the treatment site and oxidation ponds. In her brief of evidence Verna Tuteao argued that ‘the value of the remaining Rakaunui lands is affected by proximity to the sewage

⁵⁰⁶ WRC Resource Officer, ‘Consent Compliance Monitoring Report – Raglan Wastewater Treatment Plant,’ 20 November 2012. Waikato Regional Council file 60 66 83A Vol 17 (supporting papers #322)

⁵⁰⁷ Catherine Robinson to the author, 3 September 2013. ‘Unfortunately we have needed to withhold material relating to the ongoing investigation of an incident that occurred in June 2013, plus a legal opinion in order to avoid prejudice to the maintenance of the law and to maintain legal professional privilege, pursuant to sections 7(g) and 6(a) of the Local Government Official Information and Meetings Act 1987 (LGOIMA).’

⁵⁰⁸ ‘Waikato District Council charged over spill,’ *Raglan Chronicle*, 19 December 2013, p5

ponds.’ ‘In the last five years, the Tuhoea Wahanga Trust has had cause to communicate with the Council about the defecation habits of water fowl on Rakaunui 1C2B2B. The fowl would sit on the sewage ponds and shit on our block, a practice that not only interferes with the lessees dairy operation, but surely, what is not good for the milk must also impact upon the soil.’⁵⁰⁹

3.4 Conclusion

In the end the upgrade to the Raglan sewerage system remained in many ways as it had existed before—with continuing discharges to the harbour. The discharges themselves had certainly improved with new treatment systems but this improvement took many years. It was only in 2012 that the Raglan Wastewater Treatment Plant reached a high level of compliance. For nearly a decade it was consistently at a level of significant non-compliance but the WRC did not take any significant enforcement action. The effects of the sewage on the environmental state of the harbour and customary fisheries continue to have negative consequences for tangata whenua at Whaingaroa Harbour. The most recent spill in June 2013 is evidence of this.

⁵⁰⁹ Wai 898, #M17, p 13

Conclusion

For the period up to 1970 the Crown asserted and delegated authority for the environmental management of Whaingaroa Harbour initially to the Marine Board and later the Marine Department for most of the second half of the nineteenth century. In 1894 the Raglan County Council was given the powers of a Harbour Board and under the 1883 *Harbours Act* it was constituted as the Raglan Harbour Board. From the evidence that was consulted there was no provision for the recognition or protection of Maori interests in the establishment of the Raglan Harbour Board or the on-going management by the Raglan Harbour Board. There did not seem to be a major impact from the implementation of these powers for the Maori relationship with and customary management of Whaingaroa Harbour until the 1970s.

In the 1970s the Raglan County Council, funded and managed by the Ministry of Works and Development, the Ministry of Transport and the Department of Health, began to develop a sewage system at Raglan that significantly affected Maori interests in Whaingaroa Harbour and negatively impacted the Maori relationship and customary management of the harbour environment. The Raglan Harbour Board continued its management of Whaingaroa Harbour until 1989 when the Waikato District Council briefly became responsible for the management of the Harbour. In 1991 the Waikato Regional Council took over responsibility for the environmental management of Whaingaroa Harbour but the District Council continued to manage the sewage system. The Crown and agencies with delegated powers, the Waikato Regional Council and Waikato District Council, attempted to respond to Maori concerns regarding the development of the sewage system but always did so within the confines of the development of a sewage system that would still discharge wastewater into the Harbour against the wishes of tangata whenua. Thus while it may seem that the Crown was responding to Maori concerns, the consultation process was less than adequate in the

eyes of Tainui and others since the land based disposal of sewage was never seriously considered. The Town and Country Planning Act 1977 and the Resource Management Act 1991 should have provided some protection for Maori interests in the Harbour but they were refused the right of veto by the Planning Tribunal, Environment Court, the Waikato Valley Authority, the Commissioner for the Environment, Raglan County Council, Waikato District Council and Waikato Regional Council Hearing Committee.⁵¹⁰

Customary non-commercial fisheries have been managed by the Crown through various forms of legislation and regulations since the 1970s but they are currently managed under the Fisheries (Kaimoana Customary Fishing) Regulations 1998 formerly through the Ministry of Agriculture and Fisheries and currently through the Ministry of Primary Industries. Provision has been made for the recognition and protection of Maori interests in the continuing customary use and management of fisheries through the establishment of rohe moana boundaries by various groups around Whaingaroa harbour and by the appointment of tangata kaitiaki. While customary fisheries are now regulated to a high degree the main issue is that there is little to no regulation of non-commercial non-Maori recreational fisherman by the Ministry of Primary Industries. In the late 1990s Tainui provided a submission to the Ministry of Agriculture and Fisheries that Tainui should be actively involved in the development of legislation and regulations related to Pakeha recreational fishing around Whaingaroa Harbour because over-fishing by recreational fishers had caused significant damage to the overall fish stock but they were ignored. In addition to these issues the sewage system has significantly affected the health of customary fisheries in Whaingaroa Harbour to the extent that most customary fisheries are too polluted for consumption.

Much as the customary management of the Harbour and customary fisheries were strongly affected by the sewage system so were wahi tapu around the Harbour area. The

⁵¹⁰ See Angeline Ngahina Greensill for a discussion of the connections between arguments over the right to 'veto' and environmental racism: 'Inside the Resource Management Act: A Tainui Case Study,' M.A Thesis, University of Waikato, 2010, pp 83-87

Raglan sewage system's oxidation ponds were built directly on the resting place of the taniwha Te Atai o Rongo—an act of desecration that only was ameliorated after decades of protest from Tainui. The Crown's provision of environmental regimes did not recognise or protect the Tainui relationship with Te Atai o Rongo.

The WRC's treatment of tangata whenua environmental concerns has been consistently more constructive than the WDC. When the WRC acted in the role of an active objector or appellant in its own hearings and at the Environment Court it could often clash with tangata whenua. The WDC on the other hand seemed to consistently clash with tangata whenua around Whaingaroa Harbour due to their persistence on the issue of continued discharges to the harbour and what tangata whenua perceived as continued negligence with regards to operational and emergency malfunctions of the sewerage system.

The Crown had delegated the responsibility for environmental management to the Waikato Regional Council but the Council has refused to use enforcement action against a consistently non-compliant Waikato District Council. The Whaingaroa Harbour case-study reflects the conclusions of the recent report by the Auditor-General into the management of freshwater fisheries that found that the Waikato Regional Council 'does not appear to currently have effective strategies of management systems to address risks associated with significant non-compliance and/or repeated non-compliance.'⁵¹¹

⁵¹¹ Controller and Auditor-General, *Managing freshwater quality: Challenges for regional councils* (Wellington: Office of the Auditor-General, 2010), p 73

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- AM Sherwood and CS Nelson, 'Surficial sediments of Raglan Harbour' in *New Zealand Journal of Marine and Freshwater Research*, Volume 13(4), 1979
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Appendix A – Commission

OFFICIAL

Wai 898, # 2.3.87

Wai 898

IN THE WAITANGI TRIBUNAL

CONCERNING

the Treaty of Waitangi Act 1975

AND

the Te Rohe Pōtae District Inquiry

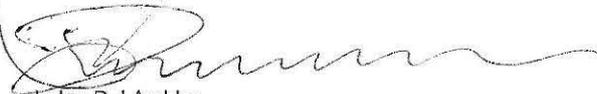
DIRECTION COMMISSIONING RESEARCH

1. Pursuant to clause 5A of the second schedule to the Treaty of Waitangi Act 1975, the Tribunal commissions David Alexander, an independent researcher, Matthew Cunningham and Martin Fisher, members of the Tribunal's staff, to prepare an overview research report on selected issues concerning non-land resources, environmental management and impacts in Te Rohe Pōtae inquiry district from the 1970s until the present day, complementing the existing casebook research. The commission also includes four local case studies of the Mōkau River mouth, the Waipā River, Pirongia Forest Park and Whaingaroa Harbour. This project is a result of the Tribunal's Chief Historian's rapid appraisal review of the Te Rohe Pōtae research casebook and subsequent discussions with parties to the inquiry (Wai 898, #6.2.43 and #2.5.126).
2. Significant issues concerning Crown policy and action affecting Te Rohe Pōtae Māori that the researchers should address in this district overview include:
 - a) The provision and implementation of harbour management regimes, in particular their impact on kaimoana and Māori access to and kaitiaki responsibilities for customary marine resources;
 - b) The provision and implementation of local government zoning schemes and their impact in particular on Māori communities adjacent to towns and on coastal land;
 - c) The provision and implementation of management regimes for forest parks and any other conservation estate areas;
 - d) The provision and implementation of management regimes, for the control and prevention of the environmental degradation of coastal areas, harbours and natural waterways, and associated resources. The coverage should include:
 - i) industrial pollution and gravel and sand extraction and their impacts on customary Māori usage and guardianship; and
 - ii) mahinga kai, kaimoana and customary management of inland waterways and estuaries;
 - e) The provision and implementation of environmental management regimes for introduced species in waterways and the consequences for Te Rohe Pōtae Māori in respect of customary freshwater fisheries, including tuna;

- f) The implementation, insofar as they affect Te Rohe Pōtae inquiry district, of statutory provisions and regimes for the protection of wāhi tapu from damage, and of portable taonga from damage, desecration and removal;
 - g) The adequacy of Crown-established environmental and resource management regimes implemented in this district, including those with powers and responsibilities delegated to local authorities, for enabling consultation with and the participation of Māori, including for decision-making and the exercise of kaitiakitanga and focusing in particular on the operation of the Resource Management Act 1991; and
 - h) The adequacy of the Crown's monitoring of delegated powers for environmental and resource management in Te Rohe Pōtae district.
3. The report will provide more in-depth coverage of the above issues by way of four case studies:
- a) A case study of Whaingaroa Harbour and the surrounding area, covering environmental management provisions and implementation, local authority powers and zoning, introduced and native species protection and control, management powers for water rights, powers for the protection of wāhi tapu and cultural heritage items and consideration of impacts of these in areas such as the continued exercise of kaitiakitanga, participation in environmental decision making, water pollution and loss of water quality, losses or reductions in customary fishery resources and loss or damage to wāhi tapu and cultural heritage items.
 - b) The cultural and environmental impact of the resource management and statutory regimes for protecting wāhi tapu at the Mōkau River mouth, including the status of wāhi tapu not thus protected.
 - c) The environmental management regime provided for the Waipā River and its tributaries, in particular downstream of Te Kuiti, and its impacts on the exercise of kaitiakitanga over the waterways and their resources, the maintenance of water quality, the maintenance and protection of customary river resources, including fisheries, and the protection of wāhi tapu and cultural heritage items.
 - d) The establishment of Pirongia Forest Park, the management regime provided and implemented, and its impacts on continued Māori kaitiakitanga over park resources, customary uses and interests in the park, and the adequacy of Department of Conservation's engagement with tangata whenua over the administration and decision-making for the park.
4. A complete draft of the report will be circulated to claimants and the Crown for comment prior to the report being finalised.
5. The commission ends on 16 December 2013, at which time one copy of the final report must be submitted for filing in unbound form. An electronic copy of the report should also be provided in Microsoft Word or Adobe Acrobat format. Indexed copies of any supporting documents are also to be provided as soon as it is practicable after the final report is filed. The report and any subsequent evidential material based on it must be filed through the Registrar.

6. At the discretion of the Presiding Officer the commission may be extended if one or more of the following conditions apply:
 - a) The terms of the commission are changed so as to increase the scope of work;
 - b) More time is required for completing one or more project components owing to unforeseeable circumstances, such as illness or denial of access to primary sources; and
 - c) The Presiding Officer directs that the services of the commissionee be temporarily reassigned to a higher priority task for the inquiry.
7. The report may be received as evidence and the researchers may be cross-examined on it.
8. The Registrar is to send copies of this direction to:
 - David Alexander, independent researcher
 - Matthew Cunningham and Martin Fisher, Research Analysts/Inquiry Facilitators
 - Claimant counsel and unrepresented claimants in the Te Rohe Pōtae district inquiry
 - Director, Waitangi Tribunal
 - Chief Historian, Waitangi Tribunal
 - Manager – Research Inquiry Facilitation, Waitangi Tribunal
 - Inquiry Supervisor, Waitangi Tribunal
 - Inquiry Facilitator, Waitangi Tribunal
 - Solicitor-General, Crown Law Office
 - Director, Office of Treaty Settlements
 - Chief Executive, Crown Forestry Rental Trust
 - Chief Executive, Te Puni Kōkiri

DATED at Wellington this 18th day of December 2012.



Judge D J Ambler
Presiding Officer

WAITANGI TRIBUNAL

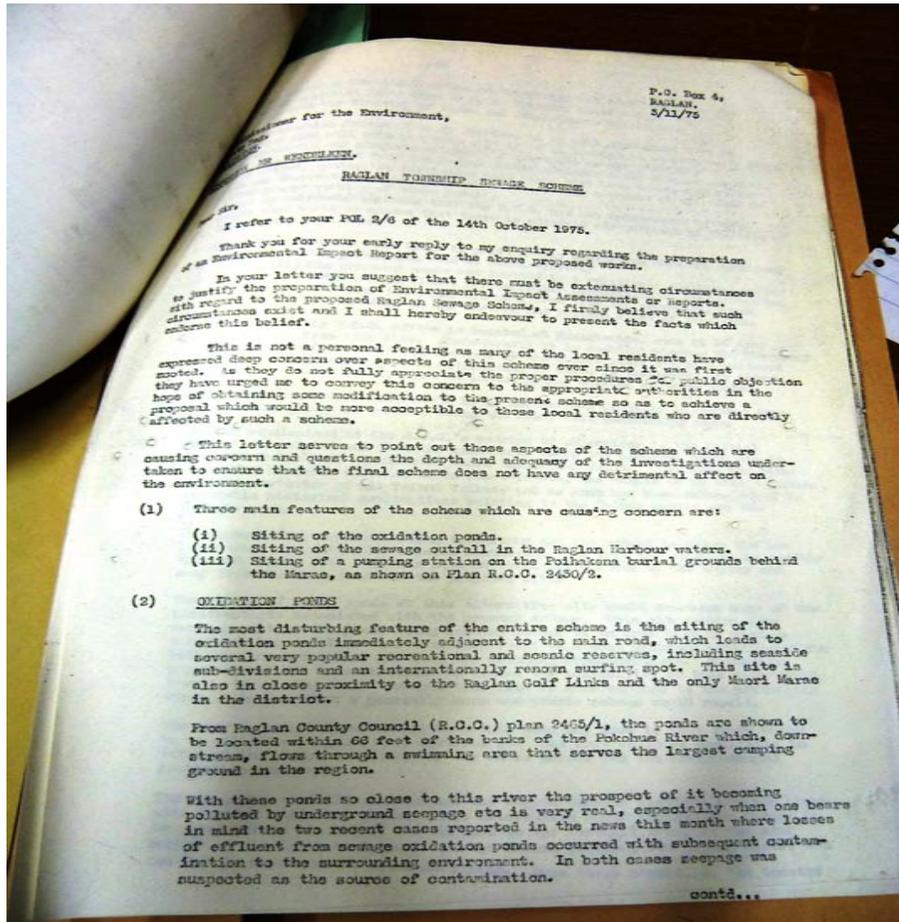
Appendix B – consent compliance overview and summary timeline

Raglan wastewater treatment plant – consent compliance

Date	Status awarded	Enforcement action
1978-1996	Little to no monitoring of discharge and its effects.	N/A
Mid-1997	Unofficial monitoring report reveals that the WDC is breaching most of its consent conditions.	N/A
December 1997	Unofficial monitoring report reveals that the WDC is breaching many of its consent conditions.	N/A
May 1998	Unofficial monitoring report reveals that the WDC is breaching many of its consent conditions.	N/A
February 1999	Unofficial monitoring report reveals that the WDC is breaching many of its consent conditions.	N/A
January 2000	Unofficial monitoring report reveals that the WDC is breaching many of its consent conditions.	N/A
April 2000	Significant non-compliance	Due to a sewage spill in the mouth of Aro Aro Bay the WDC had breached Sect 15 (1)(a) of the RMA. No enforcement action is recommended.
January 2002	Low-level non-compliance	No enforcement action is recommended.
April 2003	Significant non-compliance	No enforcement action is recommended.
May 2004	Significant non-compliance	No enforcement action is recommended.
January 2005	Significant non-compliance (for discharges outside the consent limits)	An abatement notice is issued.
May 2005	Significant non-compliance	No enforcement action is recommended.

April 2006	Significant non-compliance	No enforcement action is recommended.
July 2006	Significant non-compliance for treatment site construction	A formal warning letter is issued.
August 2007	Partial compliance	No enforcement action is recommended.
April 2008	Significant non-compliance for the decommissioning of the old oxidation pond	An abatement notice is issued.
March 2009	Significant non-compliance	A formal warning letter is issued.
June 2010	Significant non-compliance	A formal warning letter is issued.
November 2011	Partial compliance	Letter of Direction is sent.
November 2012	High level of compliance	No enforcement action is recommended.

Raglan wastewater treatment plant - timeline



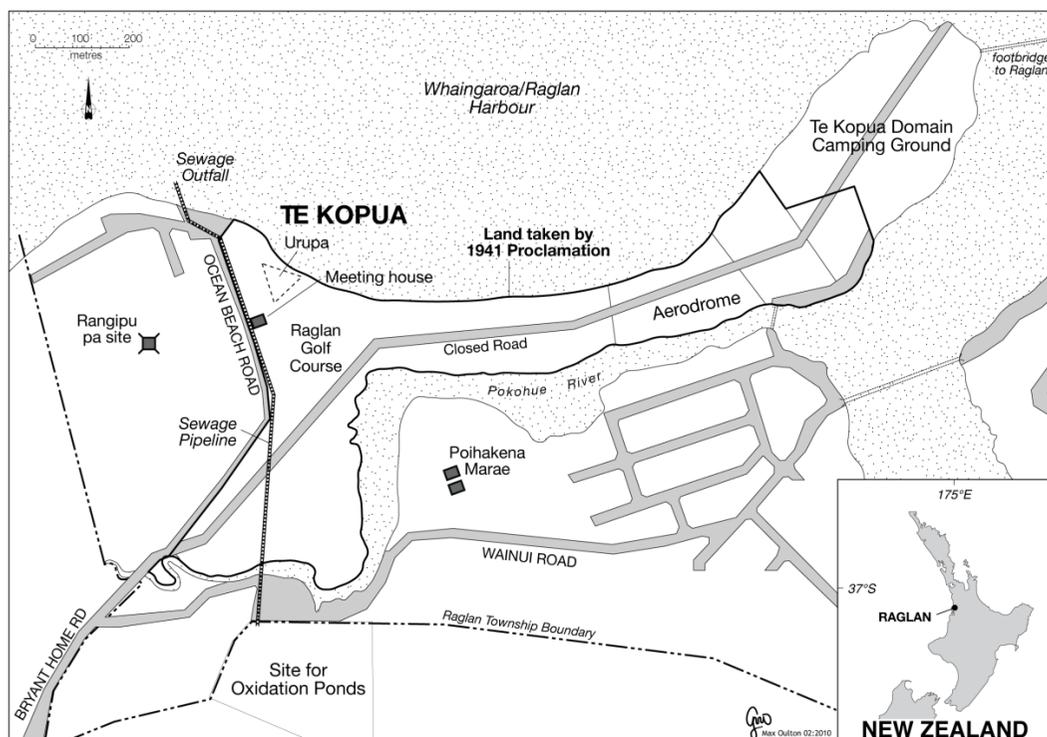
James 'Tex' Rickard's letter to the Commissioner for the Environment

January 1971	Water Allocation Council issues discharge permit to Raglan County Council (RCC).
January 1972	Raglan residents, both Maori and Pakeha, petition the RCC to address problems with the sewerage system.
October 1973	Tainui Tribal Committee petition Koro Wetere MP to oppose the taking of Maori land for the sewerage system and discharges into the harbour.
February 1974	Eva Rickard writes to the Waikato Valley Authority to express her opposition to the proposed sewerage system.
March 1974	Wetini Mahikai Tuteao writes to the Minister of Maori Affairs, Matiu Rata, to state his opposition to the construction of oxidation ponds near Poihakena Marae.
August 1975	James 'Tex' Rickard writes to the Minister of Health to express his opposition to the proposed sewerage system with specific questions about environmental testing.
November 1975	James 'Tex' Rickard writes to the Commissioner for the Environment and the Minister of Transport to state his opposition to the siting of oxidation



Broken sewage pipe, c. 1978

March 1977	ponds on top of Te Rua o Te Atai o Rongo, lack of environmental testing and discharges to the harbour.
February 1978	RCC sewerage system operational after years of delays.
June 1985	RCC sewerage pipeline breaks due to beach erosion.
November 1990	Waikato Valley Authority issues discharge permit to RCC.
February 1991	Waikato District Council (WDC) lodges discharge application and public notification with the Waikato Regional Council (WRC).
August 1993	Eva Rickard & Angeline Greensill write to the WDC to express their opposition to the new discharge application for the same reasons that were outlines in the 1970s petitions.
December 1993	WRC holds Restricted Coastal Activities Hearing into the Raglan sewerage system and approves proposed WDC resource consents.
February 1994	Eva Rickard & Angeline Greensill sign a memorandum of agreement with the WDC, WRC and DoC to allow resource consents on the condition that alternative options are investigated and trialled.
	WRC issues resource consent to the WDC to discharge treated sewage



Location of Marae, Urupa, oxidation ponds and sewage outfall

March 1994	subject to a number of special conditions. The Raglan Sewerage Consultative Group (RSCG) is established to identify and evaluate the feasibility of alternative options for sewage disposal.
December 1994	RSCG chooses option 3A that allows for continued discharges into the harbour following treatment.
October 1997	WDC lodges resource consent application to the WRC to discharge treated sewage into the harbour.
November December 1997	– A number of tangata whenua express their opposition to the WRC for the WDC's resource consent application.
April 1999	WRC Independent Hearings Commissioner grants resource consent and dismisses appeals in opposition but instructs the WDC to decommission the oxidation pond built on top of Te Rua o Te Atai o Rongo.
April 1999	WRC Hearings Committee has two of three members approve the resource consent while one member opposes the consent.
September 1999	Tangata whenua and Pakeha residents appeal WRC decision the Environment Court.
June 2000	Establishment of Raglan Wastewater Working Party (consisting of tangata



Monument of Te Atai o Rongo, 1990

Early 2002	whenua, WDC & WRC) to investigate alternative options to harbour-based discharges.
July – August 2002	The Raglan Wastewater Working Party persists with the findings of the previous consultative group and finds alternative land based options for disposal too expensive and unsuitable to Raglan’s topography.
May 2004	Agreement in Principle formulated between tangata whenua and the WDC but not signed by Angeline Greensill.
February 2005	Environment Court Judge Shepperd approves resource consents for WDC’s new sewerage system that require a higher degree of treatment and the decommissioning of the oxidation pond built on top of Te Rua o te Atai o Rongo but discharges to the harbour continue.
2008	Environment Court issues resource consents for the construction of a new treatment site, the discharge of treated sewage into the harbour, the retention of the existing pipeline and the regulation of odour from the oxidation ponds. Old secondary pond that was built on Te Rua o Te Atai o Rongo is converted into an estuary