Resource Management (Forms, Fees, and Procedure) Regulations 2003 (as at 03 March 2015)

Form 33Notice of person's wish to be party to proceedings

Section 274, Resource Management Act 1991

To the Registrar
Environment Court
Auckland, Wellington, and Christchurch

I, Vivienne Theresse O'Neill (also known as Vivienne Theresse Taueki), wish to be a party to the following proceedings:

- the Environment Court's reference number for the proceedings:
  ENV-2021-WLG-000023

- the parties to proceedings and the nature of the proceedings:
  The NZ Fish & Game Council appeal under clause 14 of the RMA 1981 against the decision of the Manawatu-Wanganui Regional Council on Proposed Plan Change 2 to Horizons One Plan

I am:

- a person who made a submission about the subject matter of the proceedings on behalf of Tamarangi, a hapu of Muaupoko;
  and on behalf of the Hokio A Maori Land Trust

- a person who has an interest in the proceedings that is greater than the interests of the general public. These greater interests include protected customary rights (including customary fishing rights), te Tiriti o Waitangi rights, and statutory rights such as those provided for under sections 6(e), 6(g), 7(a), and 8 of the RMA 1991.

- I am kaitiaki and an owner in the lands administered by the Horowhenua 11 (Lake) Trust. The trust is tasked under Section 18 of the Reserves and Other Lands Disposal Act 1956, to administer the land under and around the waters of Lake Horowhenua, as a fishery easement for the whanau/hapu of the Muaupoko tribe.

- The ROLD Act 1956 recognises the existence of ancient protected customary fishing rights of Muaupoko whanau/hapu.

- I am not a trade competitor for the purposes of section 308C or 308CA of the Resource Management
  Act 1991.

- I am interested in all the proceedings.

- I support the relief sought because—

  the proposed One Plan change number 2 does not provide the appropriate rules or policies as identified in the 2012 Environment Court Decision on Appeals to the Proposed One Plan – requiring a statutory regime for the management of the catchment of Lake Horowhenua to be included in HRC's proposed Plan Change 2. Instead, HRC have opted for a voluntary approach. Acceptance of such a proposal will result in further degradation, desecration and, potential destruction of ancient Muaupoko taonga and waahi tapu of the most highest significance in regard to their mana and their mauri.

- I agree to participate in mediation or other alternative dispute resolution of the proceedings.

..

.....

Signed: VivienneTheresse O'Neill (also known as Vivienne Theresse Taueki

6 December 2022

.....

Date

Address for service of person wishing to be a party:
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Form 38

Application for waiver or directions

Section 281, Resource Management Act 1991

To the Registrar

Environment Court

Auckland, Wellington, and Christchurch

I, Vivienne Theresse O'Neill (also known as Vivienne Theresse Taueki), apply for a waiver in the following proceedings:

- The Environment Court's reference number for the proceedings is ENV-2021-WLG-000023.
- I am the following party to these proceedings:

  I was a submitter to the Proposed Plan Change 2.

  I am applying to the Court to become a party to the proceedings under Section 274.
- I seek the following waiver:

  waiver for filing the section 274 application out of time; and

  waiver for the filing fee of $100.

The reason for filing the application out of time is due to the serious health issues I have been suffering over the past two years that have severely affected my ability to engage or participate in activities such as filing an appeal or an application to become a s274 party to an appeal. The health issues I suffer include past current and ongoing serious cultural effects that result directly from the degradation and desecration of Lake Horowhenua ("the lake"), one of Muaupoko's most treasured taonga and Waahi tapu and are at times so intense that they affect my ability to carry out normal every day activities related to kaitiakitanga.

Much of the degradation of the lake has been caused by unauthorised and unconsented discharges of contaminants and leachates to ground and surface water within the catchment of the lake, in particular nitrates and phosphorus from intensive land use activities such as dairy farming and commercial vegetable growing industries. Horizons Regional Council ("HRC"), despite its One Plan Rules and Policies around discharges to land and water, has continued to ignore our requests to issue abatement notices or enforcement orders and instead has knowingly allowed these unauthorised and unconsented discharges to continue unfettered. Again, despite being fully aware of these matters and the serious impact these discharges are having on our fishery, fresh water quality and the mauri of the lake, Horizons has abandoned their statutory obligations and One Plan rules and policies in favour of protecting the interests of private industries such as dairy farming and fresh vegetable growers. HRC are also fully aware of the serious cultural effects that Muaupoko whanau and hapu suffer as a direct consequence of the discharges, effects that impact on the spiritual, physical and psychological health of tangata whenua working responsibly as kaitiaki to preserve the mauri of the lake and the inherent relationship, customs, practices, usages and values attached to this ancient taonga and Waahi tapu.

UNAUTHORISED AND UNCONSENTED DISCHARGES OF SEWAGE TO LAKE HOROWHENUA

I have attached a copy of the Decision of the Hearing Committee dated 31 January 2000 (marked as "Exhibit A") and also a copy of the Cultural Impact Report prepared by Mr Gerrard Albert, Manager Iwi Relationships, Horizons Regional Council (marked as "Exhibit B") for the

consideration of the hearing committee, in relation to an application for retrospective consent filed by the Horowhenua District Council ("HDC") for emergency works carried out in 1998 following the overflow of hundreds of thousands of cubic litres of treated and untreated sewage from the Levin Waste Water Treatment Plant ("LWWTP") to the waters of Lake Horowhenua via overland flow.

Mr Albert's report is focussed on the cultural and spiritual aspects relevant to the application and the nature of the adverse effects resulting from the discharge of sewage to Lake Horowhenua. Mr Albert describes the ongoing adverse effects on the health of Muaupoko over time and the stages to which a person can deteriorate physically, from mate Maori (unexplained physical sickness caused by spiritual unrest) and how this can lead to mate apakura (death attributed to spiritual causes) if for example the threat of the discharge occurring again has not been removed.

The Hearing Committee's decision was to decline the discharge permit sought because … *"from a cultural and spiritual perspective:*

a. *The discharge is contrary to the purposes and principles of the Act;*

b. *The discharge is contrary to several of the policies and objectives of the Regional Policy Statement, the Transitional Regional Plan, or the proposed Land and Water Regional plan; and*

c. *The ongoing cultural effects cannot be avoided, remedied or mitigated by the imposition of consent conditions".*

The 1998 discharges remain as unauthorised activities. HRC decided that there would be no "punitive enforcement action but signalled that future sewage discharges to the Lake would be unlikely to be considered favourable …".

In 2008, I was informed that there had been another overflow of sewage from the LWWTP that entered the lake via overground flow. Despite requests made to Mike McCartney, HRC Chief Executive Officer, I did not receive any response whatsoever. A copy of my letter dated 16 October 2008 is attached and marked as "Exhibit C".

Following the Hearing Committee's decision, a working party, including myself, was established with the objective of developing a consensus community view on the appropriate solution to Levin's sewage problems. This process resulted in the HDC formally adopting the option to relocate the Waste Water Treatment Plant to another location and this was meant to occur by 2015, however, for reasons unknown, this option was discarded by HDC. Despite requests for information made to both HDC and HRC regarding the future of the LWWTP, no response was received and it wasn't until early 2015 that I was made aware that HRC had granted a 20-year consent to the HDC to operate the LWWTP (copy of Consent Decision attached and marked as "Exhibit D").

Despite both the HDC and HRC being aware of the serious cultural effects related to human sewage mixing with ground or surface waters of spiritual value such as Lake Horowhenua and also being aware that "the occurrence of the effects is not contingent on the volume, or dilution of the sewage to a certain strength (or weakness)", the consent process was carried out without any notification or consultation with Muaupoko to determine the actual and potential adverse effects caused by the

activity and there was no consideration given to the issues identified in Mr Alberts report, instead, the application was considered and granted by Mr Greg Bevin, HRC's Regulatory Manager.

The only reference to leachate entering the groundwater is at page 5 of the decision as follows:

> *Discharge to land*
> *"The applicant has two ponds onsite which are used for the storage of treated wastewater. The ponds are located within 140m of the property boundary. The ponds are lined with a synthetic liner to ensure the permeability does not exceed 1x10-9m/s. Given the ponds are lined to the permitted activity permeability standard identified in Rule 13-13, it is considered that this will reduce the volume of wastewater leaking from the ponds to a standard considered acceptable by MWRC, thereby ensuring the effects on groundwater are less than minor."*

I have attached and marked the following as "Exhibit E, Exhibit F, and Exhibit G":

1. a copy of my letter dated 1 March 2019 to Mr Michel McCartney, CEO, Horizons requesting information relating to the LWWTP consent;

2. a copy of the response I received from Mr Nic Peet on behalf of Mr McCartney dated 11 March 2019; and

3. a copy of the email I received from HRC Councillor John Barrow dated 8 March 2019 in response to my letter to Mr McCartney and my request to meet with HRC Councillors.

For completeness, I have attached and marked as "Exhibit H" a copy of a newspaper article that featured in the Horowhenua Chronicle dated 3 November 1916. The article covers the inquest into the death of my great-great grandmother in 1926. In this matter the coroner ruled that her death was as a result of "spiritual exhaustion." I have included this article as evidence of this illness previously occurring in my whakapapa.

DECISION ON APPEALS TO ENVIRONMENT COURT 2012
The following are excerpts from the decision of the Environment Court dated 30 August 2012. I would like to advise the Court that I was a s274 party to the appeal filed by the Water and Environmental Care Association (ENV-2010-WLG-000160 in relation to reinstating Lake Horowhenua's catchment in Table 13-1 of the Proposed One Plan.

> Lake Horowhenua, coastal lakes, and related sub-zones
> [5-51] The Minister of Conservation, supported by Fish and Game, wishes to see the West_4 and 5 (Kaitoke Lakes and Southern Wanganui Lakes), and Hoki_1 (Lake Horowhenua) water management subzones reinstated in Table 13-1 of POP. That would result in them being specified catchments and some land use activities would be regulated to control discharges of contaminants, with the intention of raising the quality of surface water. Those zones were included in NV POP but not in DV POP.
>
> [5-52] There are 17 lakes and one wetland in the West 4 and 5 zones. Hoki_la and - - I b contain Lake Horowhenua, which is the largest dune lake in the country.
>
> [5-53] In respect of Lake Horowhenua, the Hearings Panel noted that it ... is subject to extremely elevated total and dissolved nitrogen and phosphorus concentrations.

Ammoniacal nitrogen is also occasionally elevated to levels that are toxic to aquatic life. It went on to note that Levin's sewage was discharged into the lake until the mid-1980s, and that it continues to receive stormwater from the town. The Panel concluded that there is an evidential basis for including the Lake's catchment in Table 13-1 ... provided cropping and horticulture are retained as intensive land uses to be regulated. It went on to conclude that those intensive land uses should not be regulated, and so the Lake was withdrawn from the Table.

[5-56] The case made by the Minister and Fish and Game placed considerable reliance on the evidence of Dr David Kelly, presently a senior scientist with the Cawthron Institute in its Coastal and Freshwater Section. He, in turn, discussed the coastal lakes analysis undertaken by Mrs Kathryn McArthur and contained in her s42A Report, and a National Coastal Lake Survey, reported in 2009 and 2011. Dr Kelly told us that **dune lakes are an internationally rare environment class**, known only in New Zealand, Australia, Madagascar and south-eastern coastal USA.

[5-57] In short, it is his conclusion that notwithstanding the lack of, or limited, monitoring of these lake systems it can be reliably said that 13 of these lakes are ... nearly all predicted to presently exceed the POP standards for [total nitrogen] concentrations. This suggests that management within the lake catchments necessitates reductions in nutrient loadings to achieve POP standards, and future land use development needs to be managed to limit nutrient losses. He goes on to say that the figures for the five lakes within these management zones, for which there are available water quality data, support such a finding and that catchment nitrogen loading would need to be reduced by an average of 47% to meet POP standards for total nitrogen, and further reduced if a more protective nutrient standard was considered.

[5-58] As did other witnesses, Dr Kelly recognised that there is no one cure for Lake Horowhenua in particular. Its problems and its sources of N are complex, and may require a range of riparian and in-lake measures, such as sediment capping and dredging. Nevertheless, its diffuse N sources still require management if the lake is to be brought within nutrient limits.

[5-59] The Council's present position on not including at least Lake Horowhenua and the northern Manawatu Lakes is that it considers that there has not been sufficient modelling of the impact of CNLs on them, but that there has been sufficient modelling in the case of the Coastal Rangitikei. That said, we understand the Council's position to be that, at worst, no harm could come from doing so, and Ms Barton agreed that in the case of Coastal Rangitikei it could be a precaution against deterioration to the point of total quality failure.

[5-60] That the problems of these lakes, with Lake Horowhenua as the worst case, are complex and remedies may extend beyond limitations of non-point source discharges, is **absolutely not a reason to say ... it's too hard ... and do nothing about something that unquestionably must be contributing to the problem**.

Lake Horowhenua (Hoki I a and I b)
- All parties agree that the current state does not meet Schedule D limits.
- All parties agree that the current state of the lake is hypertrophic (highest of the lot) and requires management action (ref D Kelly table 3 and fig 3 2012).

> [5-62) Given that degree of unanimity from a group of people pre-eminent in their field, the case for bringing these lakes and management zones into a management regime so that their situation can be improved (even if not completely cured) is, again, overwhelming.

The Environment Court decisions dated 30 August 2012 gave Muaupoko some sense of hope and relief, for example:

> **"Reasonably practicable farm management practices should not be included in any of the policy and rules regime"; and**
>
> **"All intensive land uses - dairying, cropping, horticulture and intensive sheep and beef - should be brought within the policy and rules regime".**

However, following on from the 2012 Environment Court decisions on the various appeals to the One Plan, HRC staff almost immediately began working/colluding with Federated Farmers and others to develop a strategy that included the formulation of the Lake Horowhenua Accord document (copy attached and marked as "Exhibit I"). The document included "reasonably practicable farm management practices" and a non-regulatory regime, a strategy that completely ignores the court's ruling. To assist the strategy, in June 2013 HRC passed a resolution that enabled the consents department to process and approve consents for dairy farmers and fresh vegetable growers that could not meet the rules and policies of the One Plan and would not have otherwise been granted.

In August 2013 the Lake Horowhenua Accord was signed and the parties to the accord were HDC, HRC, DoC, Horowhenua Lake Domain Board and the Horowhenua 11 (Lake) Trust. The Lake Domain Board was set up and operates under Section 18 of the Reserves and Other Lands Disposal Act 1956 and it is the board's job to administer the area of land known as "Muaupoko Park" and the waters of Lake Horowhenua as a reserve.

The Lake Domain Board also has the responsibility to ensure that the recreational rights and access rights of the public are protected. The ROLD Act 1956 and subsequent legislation in 1966 enabled the construction of the weir to be built across the outlet of the lake, the Hokio Stream. The purpose of the weir was to maintain the level of the lake waters as prescribed in the s18 of the ROLD Act and to satisfy Levin's desire for better drainage throughout the catchment which had been causing the level of the lake to drop. HRC are responsible for the maintaining the weir and certain parts of the Hokio Stream.

The weir has blocked the passage of diadromous fish (whose lifecycles involve moving between salt and freshwater), and has meant the lake's sole outflow ceases in some dry years, and made the lake a giant sediment trap, this description of the lake is also used by HRC in the 2008 Hokio Drainage Scheme Review. I was recently told that Dr Max Gibbs, author of the Gibbs Report prepared for HRC, was quoted as saying that "the weir represents eutrophication by Act of Parliament: it has only exacerbated the effects of pollution flowing into the lake – of which there have been all too many sources. I cannot agree more.

Levin had always had problems with where to put its sewage, and by the 1940s an unhappy Health Department compelled action. It was no secret the town wanted to build a treatment plant by the lake, and then dig a drain to pour effluent into it; their problem was Muaūpoko would never allow this. Levin had always had problems with where to put its sewage, and by the 1940s an unhappy Health Department compelled action. It was no secret the town wanted to build a treatment plant by the lake, and then dig a

drain to pour effluent into it; their problem was Muaūpoko would never allow this and in the early 1900's Muaūpoko went to Wellington to see the Native Minister to express that they strongly opposed, "first, because it is their property, and, secondly, because an important source of food will be polluted.

Health officials, though, decided that Māori fishing rights could be ignored: they had put a bully in a bucket of effluent for a few days, and when it survived, they determined there would be no effect on fish. But plans *were* changed to avoid having to get Muaūpoko permission for a drain across their land. Instead, Levin's council suggested doing what the adjacent abattoir did—digging big soak pits and draining effluent into them to "percolate away through the ground".

As the local Medical Officer of Health explained, this would mean "all the effluent would find its way into the Horowhenua Lake through the soak pits without causing any trouble." The "advantage," he told his superiors, was it "would not be evident at a glance that it is reaching the lake at all and this will obviate the Maoris raising difficulties." So, when the sewage scheme was built, Muaūpoko remained unaware all the effluent went underground to their lake. In reflecting on the town's duplicity.

THE HOKIO DRAINAGE SCHEME

The 2008 review of the Hokio Drainage Scheme (copy attached and marked as "Exhibit J") resulted in the area of the scheme being expanded from an area of 350 ha at that time to include the total catchment area of the lake (4600 ha) and the Hokio Stream. Since 2008 there have been several further increases to area of the Hokio Drainage Scheme which in the 2018 Hokio Drainage Scheme Report (copy attached and marked as "Exhibit K") recorded the total area of the scheme as being 6,100 ha, the increase in area included the diversion of drainage from areas that were outside of the lake's catchment. The 2018 report also records that the "majority of the catchment discharges directly in to Lake Horowhenua" and "predominantly services dairy and horticultural land."

Levin's stormwater drains into the lake, and as with many other non-complying, unauthorised and unconsented discharges within the catchment, has continued unfettered by the failure of HRC to issue abatement notices and enforcement orders. The Arawhata and Pātiki streams flow there through farms and market gardens that make full use of the Horowhenua's fertile soils; they are among the country's most nitrogen-polluted waterways. The amount of sediment from farm runoff that enters the lake has resulted in phosphorus levels that are well outside of the levels set out in the rules and policies of the One Plan. In the latter part of last century " it was estimated that there was over 6 million cubic metres of silt sitting on the bed of the lake and I can only assume that this amount has increased since then. The silt on the bed of the lake has resulted in Muaupoko no longer being able to access their kakahi and we have serious concerns as to their ability to survive.

HRC's somewhat dubious actions to date have confirmed the utter disrespect it has towards matters of importance to Muaupoko and the serious concerns Muaupoko have in regards to their kaitiakitanga and their obligations related to the sustainability and protection of their taonga and Waahi tapu. HRC's past actions highlight the fact that laws and rules are of no consequence to them when it comes to protecting the interests of primary industries, and the proposed Plan Change 2 is proof of HRC's failure to put in place appropriate rules and policies to protect and provide for Muaupoko customary interests within the catchment of Lake Horowhenua.

NATIONAL POLICY STATEMENT ON FRESHWATER MANAGEMENT 2020

I was the only person who made a submission to the proposed NPS:FM 2020 on behalf of Muaupoko. A copy of the submission is attached and marked as "Exhibit L". I have also attached and marked as "Exhibit M" a copy of my letter dated 27 July 2020 to the Chairperson and Councillors of HRC seeking clarity on whether or not the Council supports or opposes the Minister

for the Environment's proposal to exclude the catchment of Lake Horowhenua from the proposed NPS:FM 2020. To date I have not received a response.

THE PROTECTED CUSTOMARY RIGHTS OF MUAUAPOKO

I respectfully submit the following as justification for granting my application for waiver of fees and the filing out of time of my application to become a s 274 party to the appeal of NZ Fish & Game Council:

Resource Management Act 1991 –
Section 6 - Matters of National Importance

> "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 recognize and provide for the following matters of national importance:*
>
> ...
>
> *(e) The relationship of Maori and the culture and traditions with the ancestral lands,*
> *water, sites, Waahi tapu, and other taonga:*
>
> ...
>
> *(g) The protection of protected customary rights".*

Section 7 – Other Matters

> "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 have particular regard to:*
>
> *(a) Kaitiakitanga".*

Section 18 of the ROLD Act 1956 requires that the trustees of the Horowhenua 11 (Lake) Trust to administer the bed of Lake Horowhenua together with the islands within and a one chain strip surrounding the lake and a one chain strip along the northern banks of the Hokio Stream, as a fishing easement for Muaupoko. The lands described above are vested in the trustees on behalf of the Maori owners.

The customary fishing and other rights of Muaupoko were first recognised in the Lake Horowhenua Act 1905, this Act was eventually repealed and replaced by s18 of the ROLD Act 1956.

Muaupoko customary rights have also been recognised and provided for in the Magistrate Court and Supreme Court decisions of 1975 and 1978 respectively, both of these cases related to Muaupoko customary fishing rights.

The parties to the first case in 1975 were Joe Tukapua vs Regional Fisheries Officer, Mr Tukapua had been fined for taking toheroa without a permit and he claimed that his customary right to do this was "free and unrestricted and not subject to the Fisheries Act", Justice Cooke ruled in

Mr Tukapua's favour stating that his "rights of piscary which he and the other members of the Muaupoko ... are unique rights. They are also; insofar as the history of New Zealand and its legislation are concerned old rights". ... "They were asserted in necessarily general terms

throughout the years over which the settlement of land was made and, in the end, they were given statutory recognition".

The parties to the second case in 1978 were Regional Fisheries Officer (Appellant) vs Mr Ike Williams (Respondent), (a copy of the Judgement of O'Regan J. attached and marked as "Exhibit N"). Mr Williams had been fined for taking whitebait out of season and without a permit. As with Mr Tukapua, Mr Williams claimed that his customary right to do this was "free and unrestricted and not subject to the Fisheries Act".

At page 4 of the decision, Justice O'Reagan cites the 1975 decision of Justice Cooke as follows:

> *"The rights under the 1956 Act are special statutory rights ... They are rights reserved to the Maori owners because of the special history of this area. They may be unique. I think the result that best accords with the spirit of the words of the 1956 section and with the history is to treat the maxim "generalia specialibus non derogant" as applicable. ... That is to say, the general provisions of the Fisheries Act and Regulations do not apply to the special rights of the Maori owners to fish in Lake Horowhenua and the Hokio Stream."*

However, the Regional Fisheries officer claimed that the area on the foreshore where Mr Williams was gathering whitebait was Crown land to which his fishing rights did not extend. Justice O'Reagan rejected this argument stating that:

> *... "I do not accept that submission. The rights of piscary which he and the other members of Muaupoko who own Horowhenua 11 Block are as Cooke J. remarked in Tukapua's case unique rights. They are also; insofar as the history of New Zealand and its legislation are concerned old rights. Research by counsel and by me have not unearthed their genesis. I do not find that surprising." ... "They were asserted in necessarily general terms throughout the years over which the settlement of land was made and, in the end they were given statutory recognition." ... "It declared that the bed of the stream" ... "to be and to have always been owned by the Maori owners." The declaration that such was always owned by them, so it seems to me, is statutory recognition that such ownership preceded the advent of the pakeha and the introduction of his artifices for making the laws and for creating property rights."*
>
> *"The statute provided further (s.12 (5)) that "the Maori owners shall at all times ... have their fishing rights overs such stream." ...*
>
> *"I think therefore that the right of the Crown to the foreshore at the outlet of the Hokio stream to the sea is subject to the rights of piscary of the Maori owners in that part of the stream," ... "The Reserves and Other Lands Disposal Act 1956 (s12) is, in my view, an Act of Parliament providing contrary to the provisions of s150 of the Harbours Act 1950."*
>
> *"I accordingly dismiss the appeal."*

It is my assertion that the 1978 decision of the Supreme Court confirms the following in regard to the customary rights held by Muaupoko:

1. They are free and unrestricted; and
2. They are not subject to Crown law; and

3. Crown law is subject to the customary rights of Muaupoko.

I therefore respectfully submit that the findings of the 1978 Supreme Court decision are relevant to this application in terms of s6(g) of the Resource Management Act 1991 – *Protection of Protected Customary Rights,* and can be applied to justify a decision from the Court to grant my waiver for the application fee and for filing the application to become a s274 party out of time.

Signed: .....
Vivienne Theresse O'Neill (also known as Vivienne Theresse Taueki)
Kaitiaki of Muaupoko Taonga and Waahi Tapu

Dated: 6 December 2022

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