the sea . . . we would never willingly put anything into our waterways that will contribute to the contamination of Hinemoana or Tangaroa.'[332]

22.4.2.1 *Raglan sewerage scheme*

For over 40 years, Te Rohe Pōtae Māori have opposed Raglan's sewage treatment schemes, which have been discharging sewage into the Whāingaroa Harbour, once an abundant source of kai moana and the location of wāhi tapu. Te Rohe Pōtae Māori have felt shut out and let down by decisions regarding sewage and sewerage in their rohe. The claimants argued that the Crown breached their Treaty rights when it enacted a number of resource management schemes, delegating management of the harbour and its resources to local authorities, and as a result failed to account for their mana and kaitiakitanga.[333] They criticised the Crown for 'the systematic loss of cultural identity and the ability for effective decision making due to various mechanisms that have stemmed from Crown legislative and delegated authority.'[334]

Despite the sewerage system undergoing frequent periods of review and occasional upgrades, little has changed. Māori complaints regarding the sewerage schemes have not diminished since their establishment. In addition to their inability to exercise kaitiakitanga, claimants told us how the treatment plant continuously failed to comply with the relevant water right conditions set by the Crown and its delegated local authorities, leading to polluted waterways, the loss of customary kai moana fisheries, and the desecration of culturally significant sites.[335] Throughout the period, a pattern emerges in which sewerage systems recurrently failed as Māori concerns continued to fall on deaf ears.

Raglan's first sewage treatment system was made up of a series of septic tanks. The tanks were connected to field tile soakage, which would allow the sewage to be broken down as it leached into the soil. However, soakage was poor in some areas and the disposal method became a health risk. In 1970, the Raglan County Council proposed a new sewage treatment system including a two-stage oxidation pond. It also applied for the right to discharge up to 200,000 gallons of treated domestic waste per day into Raglan Harbour.[336] The director of the National Water and Soil Conservation Authority noted at the time that the area contained 'extensive shellfish beds' and that 'any discharge from the proposed oxidation ponds must be of such quality as to maintain SA standards in the shellfish waters.'[337]

In January 1971, the Authority granted the county council a 10-year permit to discharge treated sewerage into the Whāingaroa Harbour, subject to a series of conditions, including 'the ponds being continuously operated and adequately

332. Document S53(b) (Joseph et al), p 9.
333. Submission 3.4.210, p 71; doc A152, p 3.
334. Document A99 (Ellison, Greensill, Hamilton, Te Kanawa, and Rickard), p 133.
335. Document A152 (Fisher), p 10.
336. Document A152, p 86.
337. Document A152, p 87. The 'SA' classification was the highest quality for saline water, referring to waters specifically used for shell-fishing.

within three years.[354] They also agreed that a Raglan Sewerage Consultative Group would be formed. Half of the Consultative Group was to be made up of representatives from the district and regional councils and the other half, representatives of local Māori. Together, the group would make recommendations to the councils on proposed upgrades to the sewerage system.[355] However, in February 1994, when the Consultative Group was still being established, the district council was granted a four-year permit to discharge sewage from the oxidation ponds, once again without consulting Māori. That year the faecal coliform count in the harbour rose from less than one per 100 mL in 1991 to between 700 and 2400 per 100mL, twelve times the limit for bathing waters.[356] Reports also found that eating oysters from the area 'posed an extreme health risk', with Māori noting – and DOC confirming – a loss of 70% of their kaimoana.[357]

In June 1994, following complaints that local Māori were still not being consulted, the Raglan Sewerage Consultative Group met to discuss possible alternative sewage treatment and disposal systems. At the meeting, Māori outlined their continued opposition to the location of the oxidation ponds over the lair of the taniwha Te Atai o Rongo and the discharge of sewage into the harbour near Poihakena Marae, later noting that 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.'[358] The district council, however, asserted that the soil and topography of the area were not suited to a purely land-based disposal system and approved a wetland system that would continue to discharge treated waste into the harbour.[359] Local Māori again strongly opposed the resource consent for the new system and in 1998, the district council agreed that the oxidation pond over Te Atai o Rongo would be decommissioned and the new outfall pipe would not be routed through Te Kopua land, though otherwise the scheme was to go ahead as planned.[360] In June 2000, the Raglan Wastewater Working Party was established to further explore alternative options to harbour-based discharges but in 2002 concluded that land-based disposal schemes were too expensive and not suitable for Raglan's topography.[361]

After failing to stop the resource consents for the new sewage system, Māori instead appealed to the Environment Court to have the consent shortened from the proposed 15 years to five. The court rejected this appeal, concluding that local Māori had been consulted extensively and that land-based options were not economically feasible.[362]

354. Document A152, pp 131–132.
355. Document A152, p 132.
356. Document A152, p 134.
357. Document A152, p 134.
358. Document A152, pp 142–143.
359. Document A152, pp 144–145.
360. Document A152, p 148.
361. Document A152, pp 167, 176.
362. *Tainui Hapu v Waikato Regional Council* [2004] NZEnvC 156, paras 1–2, 188.

Throughout the following decade, the sewage system exhibited a 'pattern of sewage spills and emergency overflows' amidst continued complaints from local Māori.[363] Despite compliance reports consistently finding the system at a level of 'significant non-compliance' the regional council did not take any significant enforcement action during this period.[364] Indeed, a recent report by the Auditor-General into the management of freshwater fisheries found that the Regional Council did 'not appear to currently have effective strategies of management systems to address risks associated with significant non-compliance and/or repeated non-compliance.'[365] Ultimately, the fallout following the Environment Court decision was immense and continued to affect the working relationship Māori had with the district council while our hearings were been held.[366]

Although the Crown (and the agencies to which it delegated its powers) responded to Māori concerns regarding the sewerage system, they 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'.[367] In the meantime, Māori continue to grieve at the continued destruction of the harbour, as claimant Angeline Greensill notes:

> The ponds sit like a festering carbuncle on our awa, our moana, our takutai moana. It has degraded our waterways, kaimoana areas adjacent to our marae and contributed to the destruction of traditional practices. Our refrigerator is now a thoroughfare for the human excrement of the residents of Raglan . . . Attempts to have the sewage pipeline decommissioned, the oxidation pond removed and the discharges of effluent into the Whaingaroa/Raglan Harbour terminated have been going on since 1974 . . . And who remains to clean up the mess[?][368]

22.4.2.2 *Ōtorohanga sewerage scheme*

Like the other case studies in this section, by the mid-twentieth century Otorohanga's sewerage infrastructure was made up of septic tank systems. When these tanks were full, untreated sewage was discharged directly into the Waipā River.[369] Beginning in 1969, upgrades were undertaken in the area. The general pattern that emerges is that early upgrades were undertaken without consultation with tangata whenua and resulted in high levels of effluent discharge into waterways. By contrast, upgrades undertaken after the passing of the RMA required consultation with tangata whenua and generally resulted in more tangata whenua concerns being met. In recent years, local Māori in Otorohanga have had better experiences with the district council than Raglan tangata whenua have had with the Waipā District Council. In large part, this is because they were involved in the

363. Document A152, p 198.
364. Document A152, p 204.
365. Document A152, pp 205–207.
366. Document A148, pp 221–223.
367. Document A152, pp 205–207.
368. Document M31(b) (Greensill et al), p 19.
369. Document A150, p 103.

this primary purpose. The Act then lists a hierarchy of matters decision makers must consider. Section 6 sets out what they must recognise and provide for and this includes the relationship of Māori with their ancestral lands and waters. Section 7 merely requires that the matters listed including kaitiakitanga be taken into account. Section 8 only requires that the court have regard to the principles of the Treaty of Waitangi.

Te Rohe Pōtae Māori cannot expect veto authority over the allocation, use, and management of water, waterways/bodies as that would be contrary to the principles of the Treaty of Waitangi. However, they can expect that their Treaty rights are appropriately integrated into decision making and planning under the Resource Management Act. If the hierarchy in part 2 of the Act were reversed or if the purpose of the legislation under section 5 was extended to require all those exercising duties and functions under the Act to act in a manner consistent with the principles of the Treaty of Waitangi, a different balancing exercise would be required. It would be one that was clearly focused on partnership, mutual benefit, and reciprocity, alongside sustainable management.

It would also require providing for the rangatiratanga or mana whakahaere of Te Rohe Pōtae Māori in local government, in planning, and in consent processes including enforcement. Engagement on issues such as sewage disposal would be premised upon a recognition that their culture, tikanga, and values have as much to offer as regional and local body politicians representing the views of the rest of the community. This different framework for management is more likely to meet the section 5 purpose of the legislation, as noted by the Environment Court in the *Mōkau ki Runga* decision discussed previously. As it stands, the status quo is resulting in the health of the districts waterways/bodies continuing to decline.

Thus, for all waters and waterways/bodies (with the exception of the Waipā River) there is a disconnect between the legislative framework for the management of environmental effects as regard water and waterways/bodies and the way that Te Rohe Pōtae Māori want their rangatiratanga and kaitiaki responsibilities exercised.

Therefore, we find that the Crown acted in a manner contrary to the principles of the Treaty of Waitangi from 1840 to 1991, namely the principles of good governance in article 1 and rangatiratanga in article 2. It did so because it did not legislate to recognise and provide for the mana whakahaere, values, and tikanga of Te Rohe Pōtae Māori associated with taonga water and waterways/bodies so they could be integrated into its legislative management regime. Since 1991, the Resource Management Act has improved the situation but has its limitations as described in this section and this issue needs to be addressed. The solution would be to amend the Ngā Wai o Maniapoto (Waipā River) Act 2012 to include all taonga waters, and waterways/bodies of Ngāti Maniapoto. Similar legislation will be needed for other iwi of Te Rohe Pōtae or Rohe Mana Whakahono agreements will need to be negotiated. At the least, section 8 of the Resource Management Act should be amended to state that nothing in the Act should be done in a manner inconsistent with the principles of the Treaty of Waitangi or a new reference with the wording stipulated previously should be added to section 5.