

7. OTHER INTERESTS

7.1. Recreational

231. There is high recreational use of the Lakes (during certain peak times e.g. for four weeks around the Christmas period) and a number of existing consented structures support that recreational use. This included (as at November 2010) around Lake Rotoiti - 270 jetties, 28 boat ramps, 69 boat sheds, and 10 slipways.¹⁹⁷
232. Recreational uses include kayaking, rafting, boating and use by float planes.¹⁹⁸
233. All structures on the Lake beds require consents and jetties are required to be open to the public. It is understood that these consents are due for renewal shortly and Te Arawa Lakes Trust is currently consulting on a couple of such applications.¹⁹⁹

7.2. Navigational

234. Linked to the recreational boating and rafting uses noted in the previous section, there are also navigational interests to consider. In particular, the need for the lake levels to be such that safe navigation on the Lake is ensured.
235. The harbour master has advised that a return to more natural fluctuation levels could be accommodated by relocating navigational buoys.²⁰⁰

7.3. Ecological

236. There are also strong ecological interests in the lake given the lake provides habitat for a number of native and introduced fisheries.
237. Restoring the lakes to more natural fluctuation levels would have positive ecological benefits in terms of:
- (a) maintaining the fishery values of the Lakes:

¹⁹⁷ Statement of Evidence of Alistair Malcolm Muirhead, Principal Planner – Opus Consulting, 19 November 2010, at paragraph [4.6(c)].

¹⁹⁸ See for example: Graeme O'Rouke – Principal Engineering Surveyor, Consent Holder Annual Report on Okere Gates and Ohau Weir, Bay of Plenty Regional Council Operations Publication 2012/05, 14 September 2012, section 6.1 on page 19; and Graeme O'Rouke – Principal Engineering Surveyor, Consent Holder Annual Report on Okere Gates (Consent 65979) and Ohau Weir (Consent 65980), Bay of Plenty Regional Council Operations Publication 2013/02, 1 June 2013, section 6.1, page 18.

¹⁹⁹ Email from Roku Mihinui dated 23 March 2016.

²⁰⁰ Personal comment of Joe Tahana reporting on a meeting with the Harbourmaster in February 2016.

"Lake levels set to maintain the ecological and fishery values of Lake Rotoiti need to be based as far as possible on the 'natural' range that has occurred over decades as this is the natural range to which the littoral fauna (and wetlands) will be best adapted to." – Dr David Rowe²⁰¹

- (b) the control of weeds within the Lakes and Lake beds.²⁰²

7.4. Conflicts with Cultural Interest

238. Both recreational and navigational uses have benefited substantially from the high/artificially controlled water levels. While it is acknowledged that these uses provide recreational benefits as well as some limited employment for people (including tāngata whenua) who live in the area; they have come at a significant cultural cost.
239. There is a direct conflict between the values and use of Lake Rotoiti for recreational and navigation purposes, and the cultural values, mana, mauri and relationship of tāngata whenua with the Lake Rotoiti. This conflict has been described by tāngata whenua as "a battle of recreational as opposed to a way of life."²⁰³
240. It is also relevant to note that there are adverse effects associated with the use of the jetties. Concerns raised by tāngata whenua include:²⁰⁴
- (a) increased traffic during summer months;
 - (b) traffic safety hazards for children and pedestrians;
 - (c) insufficient capacity of existing infrastructure to cope with traffic and parking;
 - (d) ongoing water quality issues; and
 - (e) complex water management regimes and rules.
241. In determining the weight to be given to the various interests it is important to bear in mind that cultural values and relationships of tāngata whenua with their places of importance are matters of national importance under s 6 of the Resource Management Act 1991 (RMA) whereas recreational interests are not specifically protected.²⁰⁵

²⁰¹ Statement of Evidence of Dr David Kingston Rowe, Freshwater Ecologist, 6 December 2010 at paragraph [35].

²⁰² Personal comment made by Dr Kepa Morgan, at Ngāti Pikiao hui 4 December 2015.

²⁰³ Personal comment made by Hakopa Paul, at Ngāti Pikiao hui 4 December 2015.

²⁰⁴ Email from Roku Mihini dated 23 March 2016.

²⁰⁵ Further information on the legal context is set out in Part 9 below.

242. From discussions with Council it is understood that a return to natural fluctuation levels would:²⁰⁶
- (a) not compromise water quality;
 - (b) would have a less than minor effect on rafters as it is only when the flows are below 13 m³ or above 30m³ that rafting cannot be undertaken and the times that this occurs are very few.
243. To the extent that a return to more natural fluctuation levels has adverse effects on:
- (a) Recreational interests - tāngata whenua consider that such effects could be addressed through dredging and/or extension of the existing jetties. Tāngata whenua are willing to work in a collaborative manner to consider dredging and extension applications by jetty owners.
 - (b) Navigational interests – tāngata whenua are willing to work in a collaborative manner with the harbour master to ensure that safe navigation is maintained.
244. It is acknowledged that these measures will come at a cost to property (and in particular jetty) owners. However, as it currently stands, there are significant adverse effects and costs being experienced by Ngāti Pikiao. The relationship of Ngāti Pikiao with the Lake, loss of culture, mātauranga and identity, are all a direct result of the high Lake levels. This situation is not consistent with important requirements of the RMA.
245. Ngāti Pikiao is aware of the competing interests and is prepared to discuss measures with jetty owners in conjunction with the Te Arawa Lakes Trust.

²⁰⁶ 10 June 2016 meeting with Council, with comments made by Council officer Graeme O'Rourke, Principal Engineering Surveyor, and representative of the consent holder.

8. CMP – MITIGATION, MONITORING AND REVIEW

247. This section summarises the measures that tāngata whenua consider should be taken in response to their concerns and the process by which they can be achieved.

8.1. Return to Natural Fluctuation Levels

248. Tāngata whenua consider that their cultural concerns with the presence and operation of the Okere Gates and Ohau Weir can only be met by a return to the natural fluctuation levels. Their firm preference is therefore for the Gates and Weir consent conditions to be amended to enable fluctuations to accord with natural levels. The key objective for tāngata whenua is to see the Lake level returned to natural levels in order to avoid the major cultural and physical effects occurring and recognising that the fluctuating levels are an important part of their association and connection with the Lake.

8.2. Adoption of the Mauri Model

249. Ngāti Pikiao seek that the mauri model be adopted to allow the incorporation of mātauranga Māori into the consenting, monitoring and review processes.

8.2.1. *Mauri Model*

250. The mauri model is a mechanism which allows tāngata whenua knowledge to be incorporated into the process.

251. In this context 'mauri' is the life supporting capacity and measure of the potential of air, water, and soil.

252. The mauri model evaluates impacts and factors within the four dimensions of mauri:

- (a) ecosystem mauri representing environmental well-being;
- (b) tāngata whenua mauri representing cultural well-being;
- (c) community mauri representing social well-being; and
- (d) whanau mauri representing economic well-being.

253. The way in which the Mauri Model works is described by Dr Kepa Morgan as follows:²⁰⁷

²⁰⁷ Statement of Evidence of Dr Kepa Morgan, in the matter of an application by the Astrolabe Community Trust to the Bay of Plenty Regional Council for resource consents in relation to the remains of the MV Rena, 13 July 2015, at paragraphs [40] to [47].

40. For each mauri dimension indicators are identified that reflect all of the attributes considered relevant by all stakeholders.
41. The impact on the mauri of each indicator is then determined using the mauri meter which uses clearly defined thresholds to quantify change. Before an evaluation is carried out, accurate thresholds are determined that identify 'no change', a 'fully restored mauri with maximum potential', and 'totally exhausted mauri'.
42. Once these thresholds have been defined, the impact upon the mauri of each indicator is determined using the following rationale:
- a. Within the no change threshold in mauri the result is zero;
 - b. If the result is not zero, the impact must be either enhancing (+) or diminishing (-) the mauri.
 - c. Whether enhancing or diminishing if the 'fully restored' or 'totally exhausted' threshold is reached the result is 2;
 - d. For all other changes in mauri that do not achieve the defined threshold the result is 1 reflecting a partial change in mauri that is either enhancing or diminishing the resilience and potential of the dimension being considered.
43. Although the scoring is coarse, the results are objective and repeatable provided the indicator thresholds are clearly defined and the same indicator set is used for all evaluations.
44. The indicator scores within each dimension can be averaged to reflect the impact occurring over time, or comparatively between decision options.
45. The four mauri dimension averages can be combined in different ways to reflect understandings of the overall changes occurring as perceived by different stakeholders simply by weighting the combination of the dimensions in a way that is aligned to the worldview of that particular stakeholder.
46. The averaged dimension scores can be plotted over time to reflect retrospective evaluations, to monitor current trends, or predict future impacts upon mauri.
47. The area confined by the mauri curve and the x-axis (time) can be calculated and reflects an understanding of the cumulative impact upon mauri over time."
254. Ngāti Pikiao consider that provision should be made for mauri monitoring in the consent conditions. This monitoring would involve:
- (a) defining monitoring 'zones' and consulting tāngata whenua to confirm indicator sets;
 - (b) establishing databases with indicators (and clear definitions) for each dimension;
 - (c) confirming indicator thresholds with experts;

- (d) documenting evaluation procedures for current state/change/new state;
- (e) forecasting against consent conditions to verify timeframe assumptions;
- (f) establishing baselines drawing on previous research and final indicators;
- (g) commencing monitoring based on regular questionnaires/interviews of kaumātua advisers/wānanga/fisher people, kaikohi kaimoana, kaitiaki and divers. i.e. the moana specialists;
- (h) in terms of frequency of monitoring:
 - i. quarterly assessment – field visual/other, photographic, environmental data;
 - ii. six monthly assessment for the first three years – to look at trends (through wānanga), compare findings against targets, identify any actions required, and report back; and
 - iii. annual reporting – to review indicator sets, and provide a comprehensive published report which can be reviewed at bi-annual symposiums.

8.3. Amending Condition References to Tāngata Whenua

255. Ngāti Pikiao consider that condition 9.1 of consent 65979 should be amended to delete references to other tāngata whenua groups as:
- (a) the Okere structure is not on the Te Arawa owned lake bed but the Okere River;
 - (b) there are no other relevant tāngata whenua within this area;
 - (c) other tāngata whenua are already accommodated through the Rotorua Te Arawa Operational Liaison Group and the Okere ki Kaituna Kaitiaki Group; and
 - (d) other tāngata whenua have recognised that Ngāti Pikiao is the only group that need to be consulted on Okere related matters.²⁰⁸
256. No objection has been raised by the other groups to this amendment through the Plan development process.
257. It is suggested that an acknowledgement is also sought from the Okere ki Kaituna Kaitiaki Group members to this suggested amendment.

²⁰⁸ Joe Tahana advised that this acknowledgement was provided orally at the inaugural meeting of Ohau ki Rotoiti Kaitiaki Group, on 7 August 2012.

8.4. Other Measures

258. Tāngata whenua request that the Council agree to the following mitigation measures.

8.4.1. Restore the Beaches

259. Tāngata whenua would like to see improved beach exposure (wider beaches) and access at a number of locations around Lake Rotoiti, particularly towards the eastern end.²⁰⁹ As noted above, tāngata whenua consider that this can best be achieved through allowing a more natural fluctuation in Lake levels. Tāngata whenua also note that some assistance may be required to restore the beaches such as sand replenishment and if that is the case tāngata whenua would work with the Council on appropriate options for that replenishment.

260. While tāngata whenua also agree that removal of encroaching grass and exotic weeds will assist in beach restoration it will not be sufficient in itself. Tāngata whenua do not support the proposal by the Council to remove such grasses and weeds through the use of herbicide.²¹⁰

8.4.2. Remove Exotic Weeds and Replant Beaches and Lake Edges

261. Tāngata whenua request that the Council undertake to:

- (a) work collaboratively with them to develop a plan to:
 - i. remove the exotic weeds and grasses around the edge of Lake Rotoiti which does not involve the application of herbicide – but instead favours more environmentally friendly measures;
 - ii. replant the Lake edges with appropriate native plants;
- (b) provide resourcing for the development of the plans as well as the carrying out of the removal and replanting work; and
- (c) give tāngata whenua first option to provide all or any part of the services and/or to be involved in the service provision.

8.4.3. Rebuild/Replenish Native Fisheries

262. Tāngata whenua request that Council work with them to develop and implement a plan to rebuild/replenish native fisheries, habitat, and mahinga kai areas.

²⁰⁹ It is noted that Te Arawa Lakes Trust supported the use of herbicide at the 2010 hearings, refer: Statement of Evidence of Roku Mihinuī, Chief Executive Officer of Te Arawa Lakes Trust, 19 November 2010, at paragraph [20].

²¹⁰ Statement of Evidence of Roku Mihinuī, Chief Executive Officer of Te Arawa Lakes Trust, 19 November 2010, at paragraph [23].

8.4.4. Better Protect from Flooding

263. Tāngata whenua request that Council work with them and provide funding to develop and implement a plan to mitigate flooding issues for lands owned by tāngata whenua and culturally significant sites located around the edge of the Lake and River.

8.4.5. Better Protect from Erosion

264. Tāngata whenua request that Council work with them and provide funding to develop and implement a plan to mitigate erosion issues for lands owned by tāngata whenua and culturally significant sites located around the edge of the Lake and River. This would include the costs associated with installing, maintaining and replacing retaining walls where required.

8.4.6. Protect and Ensure Access to Wāhi Tapu

265. Tāngata whenua request that Council provide resourcing to enable the continued protection and access to all its wāhi tapu sites around Lake Rotoiti and the Okere River.

8.4.7. Build Footpaths

266. Tāngata whenua request that the Council proceed with the establishment of footpaths around the Lake edge to ensure there is a safe place for walking – separate from the road - and to improve accessibility to Lake Rotoiti and safe passage for children.²¹¹

8.4.8. Jetty Consenting and Commercial Returns

267. Tāngata whenua request that the jetty consent reviews which fall due in 2017 be undertaken in close collaboration with them and that in particular:

- (a) an annual licence fee be imposed which enables a commercial return on the consents to go to Te Arawa Lakes Trust provided this is not prohibited by the Te Arawa Lakes Settlement legislation.²¹² At present no such fee is paid despite Te Arawa owning the bed of the Lake.
- (b) consent terms are imposed which reflect the need to regularly review the effects of such uses on the Lake.

8.4.9. Control of Gates

268. Tāngata whenua understand that the Gates are currently controlled remotely from a location in Whakatane. Tāngata whenua request that the

²¹¹ Suggestion made at Ngāti Pikiao hui 4 December 2015.

²¹² Refer section 33 of that Act.

control of the Gates be returned to the local area and that the Council provide opportunities for iwi to become involved in controlling the Gates.²¹³

8.4.10. Offset Consideration

269. Where any of the above matters cannot be achieved, there should be robust discussions on offset measures to address effects.
270. There should also be consideration of compensation provided for the actual costs incurred by tāngata whenua as a result of the maintained Lake levels – such as repayment of the tāngata whenua contribution to the cost of constructing and maintaining retaining walls and other remediation actions taken by tāngata whenua.

8.5. Cultural Monitoring

271. In addition to the monitoring that the Council is currently required to undertake under the consents, and to the mauri monitoring outlined above, tāngata whenua request that the Council agree to fund and resource the following additional cultural monitoring:

- (a) a flooding monitoring plan which:
- i. establishes which tāngata whenua owned or culturally significant sites are currently affected by flooding and what effects that flooding is having on those sites;
 - ii. measures the effects on those sites from the changes to the operation regime and the replanting regime;
 - iii. proposes and requires the implementation of additional measures to address any significant flooding issues which remain for these properties.
- (b) a planting monitoring plan which:
- i. includes a baseline plan of current levels of weed infestation and remaining areas of native vegetation around the Lake shores;
 - ii. monitors the effectiveness of the steps taken to remove the weeds and replant the lake edges;
- (c) a native fisheries monitoring plan which:
- i. includes a baseline plan of current levels; and

²¹³ Suggestion made at Ngāti Pikiao hui 4 December 2015.

- ii. monitors the effectiveness of the steps taken to rebuild/replenish the native fisheries.
272. Tāngata whenua also request that these monitoring plans and reporting be informed by a Māori perspective as is now required for all environmental reporting in accordance with section 5 of the Environmental Reporting Act 2015.



9. LEGAL SUPPORT FOR CHANGE

9.1. Consents

273. As noted earlier, the Council holds resource consents (65979 and 65980) authorising the operation and management of the Okere Gates and Ohau Weir for 35 years from 10 April 2012.²¹⁴

274. The consents are a renewal of earlier consents (1996) and were granted after a settlement was reached with tāngata whenua for mechanisms to address cultural concerns. These mechanisms included:

- (a) conditions requiring the establishment of kaitiaki groups (Ohau ki Rotoiti and Okere ki Kaituna);²¹⁵
- (b) conditions providing for the preparation (and five yearly review) of a cultural management plan;²¹⁶
- (c) a settlement agreement providing resourcing for the preparation of this cultural management plan;²¹⁷
- (d) conditions providing for the kaitiaki group to meet with Council to discuss the cultural management plan recommendations and determine whether any of the recommendations can be implemented without changing the existing conditions;²¹⁸ and
- (e) conditions providing that the Council:
 - i. may undertake a review of conditions for the purposes of dealing with any adverse effects on the environment identified in the Plan, and in order to implement any of the Plan's recommendations;²¹⁹
 - ii. must have particular regard to the recommendations in the Plan when deciding whether or not to exercise its discretion to review the conditions.²²⁰

275. There are a couple of legal issues which warrant noting as part of the context. These relate to:

- (a) validity of cultural beliefs;

²¹⁴ This is 15 working days after the grant of the consent order to allow the appeal period to expire.

²¹⁵ Conditions 9 and 10 of consents 65979 and 65980 respectively.

²¹⁶ Conditions 9.9 and 9.13 of consent 65979.

²¹⁷ Ngāti Pikiao Environmental Society on behalf of the Kaitiaki Group (to be established) and Bay of Plenty Regional Council, Settlement Agreement, 1 December 2011.

²¹⁸ Condition 9.12 of consent 65979.

²¹⁹ Condition 17.3 of consent 65979.

²²⁰ Condition 17.4 of consent 65979.

- (b) the lack of consideration of cultural impacts in previous processes;
- (c) the nature of a renewal process and the relevance of the existing environment; and
- (d) mechanisms for review.

9.2. Validity of Cultural Beliefs

276. The RMA is clear that intangible or metaphysical values are relevant matters to consider under section 6(e).²²¹
277. The environment includes people and the cultural conditions that affect them. Small changes can still have serious impacts where cultural values are relevant. For example, the Environment Court has stated:²²²

"[304] The Act does not dismiss relationships or metaphysical issues ... The Act manages natural and physical resources to enable people and communities to achieve, to the fullest extent possible when balanced with other factors, their social, economic and cultural well-being. Social and cultural well-being may, in a particular case, involve relationships and metaphysical factors, particularly under provisions such as Section 6(e) of the Act.

[305] ... Small physical changes may have more serious consequential effects on historic, traditional and spiritual aspects of the relationship Māori have with their lands, waters, wāhi tapu and other tāonga."

9.3. Lack of Consideration of Cultural Impacts Previously

278. At the time that the Okere Gates and Ohau Weir were originally constructed a very different legislative scheme was in place²²³ which did not require specific assessment of the effects on tāngata whenua. Even when the legislative regime changed and consents were renewed in 1996, a full assessment and consideration of cultural impacts was not undertaken.²²⁴
279. Some consideration occurred in the recent (2010) applications to obtain new consents for the same activity but that consideration was significantly restricted because:
- (a) the assessment of cultural effects assumed that the Lake level regime authorised by the old consents formed part of the existing environment and effects which were considered to be part of this 'environment' were therefore not assessed;

²²¹ *Friends and Community of Ngawha Incorporated v Minister of Corrections* [2002] NZRMA 401.

²²² *Te Runanga o Ngai Te Rangi Iwi Trust v Bay of Plenty Regional Council* [2011] NZEnvC 402 at paragraphs [304] and [305].

²²³ The Water and Soil Conservation Act 1967 and the Town and Country Planning Act 1977.

²²⁴ *Statement of Evidence of Roku Mihinui*, Chief Executive Officer of Te Arawa Lakes Trust, 19 November 2010, at paragraph [10].

- (b) no cultural impact assessment was commissioned from tāngata whenua to determine the full scope of cultural associations and impacts;
- (c) the conclusions on cultural effects were based on comparing the cultural impacts of the proposed renewal (as identified by the applicant) against the status quo rather than the effects pre establishment.²²⁵
280. In relation to (a), this is significant as the approach taken by the consent authority to the existing environment prevented it from considering those effects. If it is found that the incorrect legal approach was taken, then this would provide grounds for review of the consent.
281. The Environment Court has indicated its view that a failure to consider cultural impacts, particularly by local authorities, will not be tolerated and that simply accepting past conditions is not an appropriate position:²²⁶

*"[134] In our view the benefits lessen in significance when compared to the affront to Maori by the continued desecration of Te Wairo-Uri. The desecration occurred at a time when the non-Maori world did not acknowledge the importance of the Maori culture to the Maori people. Economic expediency prevailed over the integrity of Maori culture. Today Maori culture is acknowledged — to the relevant extent that it is the subject of statutory prescriptions in the Resource Management Act. Those statutory prescriptions are mirrored by extensive and clear words in the relevant statutory instruments. Words of acknowledgement are in themselves not enough. They need to be given effect to. **Where desecration has occurred in the past, and continues unabated, those now responsible are required by the statutory prescriptions to a commitment, where reasonably practicable, to put an end to that desecration.***

....

[140] There comes a time when those who are adversely affecting Maori by their activities need to "bite the bullet" if there are viable alternatives, especially when the activities were instigated without acknowledging Maori culture. It is even more so when that person is a local authority, which has statutory responsibilities that require the application of the principles that reflect Part 2 of the Act. As we have said, reflecting those principles in the relevant statutory instruments is not of itself sufficient. They need to be given effect to." (emphasis added)

9.4. Renewal and Existing Environment

282. As noted above the current consents were a renewal of the 1996 consents for the Okere Gates and Ohau Weir.

²²⁵ Refer for example to: Statement of Evidence of Alistair Malcolm Muirhead, Principal Planner – Opus Consulting, 19 November 2010, at paragraph [4.44].

²²⁶ *Te Maru o Ngāti Rangiwewehi v Bay of Plenty Regional Council* (2008) ELRNZ 331 at paragraphs [134] and [140].

283. Legally, a 'renewal' of consent is regarded as a fresh application for consent. However the existing/old consent is relevant in so far as:
- (a) there is a legal right for the consent holder to continue with the consented activity pending determination of the new consent (s124);
 - (b) the decision maker is required to have regard to the value of investment by the existing consent holder (s104(2A)); and
 - (c) efficient use considerations arise.
284. The old consents are not however relevant to consider in terms of the scale of effects. The old consents do not form part of the existing environment in a renewal process and nor do they form part of the permitted baseline. This is because:
- (a) while the existing environment includes other consented activities (which have been or are likely to be given effect to),²²⁷ it does not include the old consent since it expires prior to the date of implementing the new consent; and
 - (b) the permitted baseline is limited to activities which may be lawfully undertaken without consent.²²⁸
285. Notwithstanding this legal position, the consent authority took the old consents into account when it granted the current consents and it assessed the scale of effects for variations from the old consent rather than from the pre-Gates and Weir position or an environment without the operation of the consents.
286. This issue (and the lack of consideration of cultural concerns) were raised during the appeals process and it was agreed that this position was reserved and these issues would be part of the Cultural Management Plan and review process provisions.

9.5. Mechanisms for Review

287. The consent conditions provide an opportunity for tāngata whenua to engage directly with the consent holder in the first instance to see whether changes to the consent can be agreed rather than imposed through a review process. While an agreed process is the preferred outcome it is

²²⁷ The existing environment includes current as well as unimplemented consents for the purposes of s104(10(a) if the decision maker is satisfied that the consents are likely to be given effect to *Far North District Council v Te Rūnanga-ā-Iwi O Ngāti Kahu* [2013] NZCA 221 at paragraphs [93] to [95]. Note that leave to appeal to the Supreme Court including on this point was granted, but no decision has been released: *Te Rūnanga-ā-Iwi O Ngāti Kahu v Far North District Council* [2013] NZSC 134.

²²⁸ S104(2) of the RMA states "When forming an opinion for the purposes of subsection (1)(a), a consent authority **may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.**" (emphasis added)

important to recognise that there are valid grounds for a review if the direct engagement process does not result in agreement.

288. Section 128 of the RMA provides the Council with the power to review a resource consent as follows:

"128 Circumstances when consent conditions can be reviewed

(1) A consent authority may, in accordance with section 129, serve notice on a consent holder of its intention to review the conditions of a resource consent—

(a) at any time or times specified for that purpose in the consent for any of the following purposes:

(i) to deal with any adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage; or

(ii) to require a holder of a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or 15B to adopt the best practicable option to remove or reduce any adverse effect on the environment; or

(iii) for any other purpose specified in the consent; or

(b) in the case of a coastal, water, or discharge permit, when a regional plan has been made operative which sets rules relating to maximum or minimum levels or flows or rates of use of water, or minimum standards of water quality or air quality, or ranges of temperature or pressure of geothermal water, and in the regional council's opinion it is appropriate to review the conditions of the permit in order to enable the levels, flows, rates, or standards set by the rule to be met; or

(ba) in the case of a coastal, water, or discharge permit, when relevant national environmental standards have been made; or

(c) if the information made available to the consent authority by the applicant for the consent for the purposes of the application contained inaccuracies which materially influenced the decision made on the application and the effects of the exercise of the consent are such that it is necessary to apply more appropriate conditions."
(emphasis added)

289. Here cultural effects are required to be considered by virtue of:

(a) s 128(1)(a)(i) as there was agreement during the appeals process that cultural effects could be most appropriately dealt with following completion of the cultural management plan process; and

(b) s 128(1)(a)(iii) as the Okere Gates consent contains a provision (condition 17.3) which enables a review to be undertaken:

i. after receipt of the cultural management plan; and/or

ii. at the request of the Ohau ki Rotoiti Kaitiaki Group,

in order to deal with any adverse environmental or cultural effects identified in that plan.

(c) s 128(1)(c) as the Council approach in considering the old consents as part of the existing environment led to a material inaccuracy in the information which formed part of the application and the resulting assessments and materially influenced the grant of consent. Cultural impacts were assessed as being only a minor change from the old consent and more appropriate conditions are therefore required.

9.6. Preferred Process

290. If the Council agrees to return management of Lake Rotoiti to natural fluctuation levels then Ngāti Pīkiao considers that this can best be effected by the Council agreeing to:

(a) amend the consent conditions to expand the range of fluctuations to reflect natural fluctuation levels;

(b) include the cultural monitoring and other recommendations outlined above; and

(c) include use of the mauri model for monitoring.

291. Any such change should be undertaken in close collaboration with tāngata whenua to ensure that the fluctuation range, cultural monitoring and mauri model measures proposed in this Cultural Management Plan are accurately and adequately captured in conditions.

292. Tāngata whenua acknowledge that after an agreement has been reached with the consent holder, there may also be a need to consult with other interested parties (such as recreational groups and jetty owners) on the changes. The form and content of such consultation processes are outside the scope of this Plan so are not commented on further here.

293. If agreement cannot be reached on the necessity for, or scope of, the change, then Council can be formally requested to review the conditions in line with the review provisions in the consent and in line with the above recommendations.

294. Whichever process is adopted close collaboration with tāngata whenua is suggested.

10. CONCLUSIONS AND RECOMMENDATIONS

295. The presence and operation of the Okere Gates and Ohau Weir have significant cultural impacts which can only be fully avoided or remedied through the restoration of natural lake fluctuation levels. Such levels should be restored through a change of the resource consent conditions to increase the range of permitted fluctuations.
296. In addition, changes should also be made to the consent conditions to provide for the mauri model, mitigation measures and other changes outlined in the previous section.
297. Tāngata whenua have also suffered direct and actual losses as a result of the operation of the consents that should be investigated and remedied.

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