

## CONSENT AGREEMENT

### Ngāti Pikiao Cultural Management Plan for Okere Gates and Ohau Weir

**BETWEEN** Bay of Plenty Regional Council in its capacity as holder of consents 65979 and 65980 (“BOPRC”)

**AND** Ngāti Pikiao Environmental Society Incorporated (“Ngāti Pikiao”)

#### **BACKGROUND:**

- A. The BOPRC holds resource consents 65979 and 65980 (“Resource Consents”) which allow it to use and maintain the Okere Control Gates and the Ohau Channel Weir.
- B. Ngāti Pikiao appealed the Resource Consents. The parties reached agreement on an amended set of conditions, culminating in a consent order being lodged with the Court. The parties also entered into a Settlement Agreement on 1 December 2011.
- C. Conditions 9.1 to 9.14 of consent 65979 require the BOPRC to facilitate the establishment of the Ohau ki Rotoiti Kaitiaki Group and of the Rotoiti Cultural Management Plan (“CMP”). These conditions apply to both consents (refer Condition 10.1 of consent 65980). The conditions also enable BOPRC in its role as consent authority to exercise its discretion to review the Resource Consents within three months of receiving the CMP should it consider this is required in order to deal with any adverse environmental or cultural effects on the environment identified in the CMP.
- D. The CMP was developed by Atkins Holm Majurey on behalf of Ngāti Pikiao and the Ohau Ki Rotoiti Kaitiaki Group. The CMP identifies the cultural impacts arising from the operation of the Resource Consents.
- E. The CMP describes Ngāti Pikiao’s longstanding cultural association with the area of the Okere Gates and Ohau Weir, identifies the adverse effects on Ngāti Pikiao’s cultural values and relationships that are considered to be attributable to the operation of the Resource Consents (including case studies), and outlines Ngāti Pikiao’s recommendations for monitoring and / or addressing those adverse effects identified.
- F. While BOPRC does not accept that all of the adverse effects identified in the CMP can be attributed to the operation of the Resource Consents, it is willing to undertake certain actions to give effect to some of the recommendations in the CMP on the basis that it sees wider benefits in working with tangata whenua, as kaitiaki, to improve the environment, and to acknowledge that the implementation of certain recommendations is likely to result in a community benefit.

- G. The purpose of this Consent Agreement (“Agreement”) is to set out the recommendations that BOPRC is willing to commit to progressing, the terms of that commitment, and the role each party will take in the process. Some of the recommendations cannot be implemented without either a change to the Resource Consents or new consents, and these are addressed in a separate section of the Agreement as they may require consultation with other potentially affected parties and the wider community.

### **Section 128 Review**

- H. The parties acknowledge that this Agreement does not address matters of review under Section 128 of the RMA. BOPRC in its capacity as Consent Authority is not a party to this Agreement and has a discretion whether or not to review the consent under section 128 that cannot be fettered by any agreement between the parties.
- I. The Consent Authority will make a decision on whether to review the consent on the basis of the CMP submitted to them in accordance with the conditions of the Resource Consent and may take into account the contents of this Agreement.
- J, In the event that the Consent Authority decides to undertake a review of the consent the Consent Holder will recommend to the Consent Authority that it consult with Ngati Pikiāo before finalising the notice of review.

## **AGREEMENT**

### **Working Principles**

1. The parties will work together in a manner that reflects:
  - (a) The roles and responsibilities of BOPRC as consent holder;
  - (b) The roles and responsibilities of Ngāti Pikiāo;
  - (c) A good faith, open, honest, responsive and constructive approach to the relationship;
  - (d) Timely provision of information; and
  - (e) Timely raising of issues and a 'no-surprises' approach.

### **Key Areas of Agreement**

2. The parties agree to undertake the actions, to the extent set out in this Agreement, in relation to the following recommendations in the CMP:
  - (a) Remove exotic weeds and replant beaches and lake edges;
  - (b) Rebuild and replenish native fisheries;
  - (c) Protect and ensure access to wāhi tapu;
  - (d) Build footpaths;

- (e) Better protect Taheke Marae from erosion; and
- (f) Restore beaches and return to natural fluctuations.

**3. Remove exotic weeds and replant beaches and lake edges**

The parties acknowledge that BOPRC is already facilitating some work in this area as outlined in 3.1 and 3.2 below:

- 3.1 BOPRC agrees to continue its support, in accordance with its Biodiversity Programme, to the wetland enhancement being led by the Kaokaoroa 3B6 Ahu Whenua Trust adjacent to the Ohau Chanel.
- 3.2 Ngāti Pikiao has been invited to participate in the development of a Lake Weed Management Plan/s for the Rotorua Te Arawa Lakes. The development of these plans is currently underway and the project is being led by Boffa Miskell and jointly funded by BOPRC and Land Information New Zealand (who have lake weed responsibility). Ngāti Pikiao, along with other iwi on the lakes, are participating in the development of these plan/s. The work is targeted to be complete by the end of 2016.

The parties agree to undertake the following:

- 3.3 During 2016-2017 BOPRC will facilitate a meeting/s between Rotorua Lakes Council ("RLC"), the Department of Conservation ("DOC") and Ngāti Pikiao, with the aim of agreeing to an enhancement project (weed control and native planting) in the 'Enhancement Area' on State Highway 33 at Okere, as shown on attached Plan 1. BOPRC progressing with the project will be subject to the following conditions:
  - a) The agreement of affected landowner/s, RLC, DOC and Ngāti Pikiao to the enhancement project;
  - b) Ngāti Pikiao facilitating and obtaining any relevant iwi, hapū or marae approvals in relation to the enhancement project;
  - c) BOPRC being able to successfully obtain any other legal approvals required to undertake the project.

Subject to conditions 3.3 a-c above being achieved, BOPRC will undertake the following:

- 3.3 During 2016-2017 BOPRC will complete willow control (poisoning) in the Enhancement Area.
- 3.4 During 2017-2018 BOPRC will remove dead willows, undertake blackberry spraying (organic)/mechanical removal and undertake native planting in the enhancement area.
- 3.5 Between 2018 and 2020 BOPRC will undertake further release spraying) in the Enhancement Area, as required to ensure appropriate successful establishment of the native plants.

- 3.6 The parties agree that some level of herbicide use will be required to ensure that the exotic weed removal for the enhancement project is successful. In the event BOPRC becomes aware that an effective organic option is available, the costs associated with which are, in its view, reasonable, it agrees to:
- a) consider use of the organic option across the entire Enhancement Area and will consult in good faith with Ngāti Pikiao regarding this;
  - b) use the organic option in the parts of the Enhancement Area which are adjacent to the Lake front/beaches for at least one round of spraying and, if in BOPRC's view the spraying has been effective, to continue to use the organic option for the release spraying in those parts of the Area.

### **Rebuild and Replenish Native Fisheries**

4. The parties acknowledge that BOPRC is already facilitating some work in this area, including the following interventions/programmes:
- (a) Implementation of the fish pass in the Ohau Wall, noting that this fish pass accommodates trout and smelt;
  - (b) The ongoing maintenance of the Trout Barrier at Hamurana springs; and
  - (c) Ongoing koaro and koura monitoring programme for Lakes Rotorua and Rotoiti, led by Ian Kusabs; and
  - (d) Providing appropriate financial and in-kind support to the investigation of koura habitat enhancement opportunities as part of a project being run by Ian Kusabs, with funding from the Ministry of Business, Innovation and Employment.

### **Protect and ensure access to wāhi tapu**

5. BOPRC agrees to contribute a maximum of \$15,000 plus GST to Ngāti Pikiao to be used by Ngāti Pikiao to undertake initiatives aimed at protecting and ensuring access to wāhi tapu sites around Lake Rotoiti and Okere, provided that:
- (a) By 1 February 2017, Ngāti Pikiao provides to BOPRC, for its written approval, a works plan that details the proposed initiatives for protecting and ensuring access to wāhi tapu. The plan will include:
    - The location and name of the site/s (where appropriate);
    - The actions planned and their estimated cost; and
    - The timeframes for implementing the plan, including dates for completion; and
    - Reporting dates by which Ngāti Pikiao has to report progress and completion of key tasks to BOPRC.

- (b) Progress reports are provided in compliance with the timeframes set out in the plan. These reports may include photos, works invoices, site visits with BOPRC approved representatives or other reporting agreed with BOPRC in advance that confirms the work has been completed to a satisfactory level. On completion of the progress reports to BOPRC's satisfaction, BOPRC will pay invoices for the work completed.
  - (c) For the avoidance of doubt, BOPRC will not pay for the protection and provision of access to waahi tapu unless the works to that particular site have been approved by BOPRC.
6. BOPRC also agrees to:
  - (a) Advise if any Regional resource consents are required for the protection works;
  - (b) If District resource consents are required, provide a letter or submission in support of any waahi tapu protection works, provided the works have been previously approved by BOPRC in accordance with clause 5 above.

### **Build Footpaths**

7. BOPRC agrees to arrange a meeting with RLC at which the two councils and Ngāti Pīkiao can discuss an option for the establishment of a new footpath along State Highway 33, from the Hamurana turnoff to the turnoff to Te Takinga Marae.
8. In the event that RLC agrees to progress the establishment of the new footpath as described in clause 7 above, and obtains the necessary approvals and authorisations, BOPRC agrees provide a funding contribution of a maximum of \$15,000 plus GST toward the establishment of it.

### **Better Protect Taheke Marae from Erosion**

9. BOPRC agrees to contribute a maximum of \$50,000 plus GST to Ngāti Pīkiao to be used by Ngāti Pīkiao to undertake initiatives aimed at mitigating erosion at Taheke Marae, provided that:
  - (a) By 1 February 2017, Ngāti Pīkiao provides to BOPRC, for its written approval (including the approval of BOPRC engineering staff), a works plan that details the proposed initiatives for mitigating erosion issues. The plan will include:
    - The works planned, including engineering drawings prepared by an independent engineer, and the estimated cost of the works; and
    - The timeframes for implementing the works, including dates for completion; and
    - Reporting dates by which Ngāti Pīkiao has to report progress and completion of key tasks to BOPRC.

- (b) All necessary authorisations for any building work required (for example in relation to retaining walls) are to be obtained by Ngāti Pikiao;
- (c) Progress reports are provided in compliance with the timeframes set out in the works plan. These reports may include photos, works invoices, site visits with BOPRC approved representatives or other reporting agreed with BOPRC in advance that confirms the work has been completed to a satisfactory level. The first progress report must include an invoice for the preparation of the independently prepared engineering drawings. On completion of the progress reports to BOPRC's satisfaction, BOPRC will pay invoices for the work completed, including the costs associated with the engineering drawings.
- (d) For the avoidance of doubt, BOPRC will not pay for the work unless the works have been approved by BOPRC.

### **Restore Beaches and Return to Natural Fluctuations**

10. The Council agrees to arrange a public meeting within 6 months of the execution of this Agreement. The purpose of the public meeting is for Ngāti Pikiao to present the proposed changes to the operating regime contained within their CMP to the community. Ngāti Pikiao agrees to attend the public meeting and present the CMP proposal. BOPRC agrees to supply the venue and administrative support for the public meeting at its cost.
11. Subsequent to that meeting BOPRC will determine whether or not to establish a working group that includes representatives of the community, Ngāti Pikiao, BOPRC, and persons who are potentially affected by the proposed changes to the regime to consider the changes to the operating regime proposed by Ngāti Pikiao. BOPRC will decide the make-up of any group.
12. BOPRC agrees to consult with Ngāti Pikiao in good faith before deciding whether to establish a group and to the make-up of any such group. The parties acknowledge that the working group will only be established if BOPRC decides that there is willingness across the community to establish and participate constructively in it. In the event that a working group is established, Ngāti Pikiao agrees to actively and constructively participate in the group.
13. If established, the task of the working group would be determine whether agreement can be reached between its members to trial an alternative operating regime to that required under the current Resource Consents. The working group would be required to determine the scope, terms and conditions of any new trial, with support from technical experts.
14. In the event that the working party was able to reach agreement on these matters, BOPRC agrees to lodge the consent applications necessary to enable the trial to take place, subject to obtaining the necessary Council resolutions and approvals to do so.

15. If established, BOPRC agrees to contribute to the reasonable costs of up to two Ngāti Pikiao representatives to prepare for and attend working group meetings. The hourly rate for attendance will be set by BOPRC once the make up of any working group (if established) is determined and will reflect the hourly rate BOPRC contributes to other members of any such working group. BOPRC also agrees to contribute up to \$2,000 towards the costs of the authors of the CMP to attend the public meeting and to assist in presenting the CMP.

## **General Matters**

### **Key Contact Persons**

16. The parties will nominate key contacts for working together under this Agreement.
17. The initial key contacts are:
  - (a) Helen Creagh for BOPRC; and
  - (b) Joe Tahana for Ngāti Pikiao.

### **Communication and Consultation**

18. The parties agree they will regularly communicate and consult with each other in relation to the matters covered by this Agreement. Such communication and consultation is to be between the key contact persons in the first instance.

### **Issue Resolution**

19. Either party may refer any issue arising under this Agreement to the key contacts for each party.
20. The key contacts will endeavour in good faith to resolve the issue through open, honest and constructive communication.
21. Where any matter has not been resolved through direct negotiation between the key contacts, the matter may be elevated to the respective governing bodies of each party.
22. Matters remaining unresolved after elevation to the governing bodies, may with the consent of both parties, be referred to an independent mediator (or similar person) for consideration and recommendation. Such recommendations will not bind either party but must be considered in good faith by both parties. The costs of any independent mediator (or similar) will be shared equally by the parties.

### **Term, Review and Termination**

23. This Agreement commences on the date that it has been executed by both parties and will remain in force until the matters covered in this Agreement are completed or the Agreement is terminated in accordance with clause 26 below.

24. This Agreement may be:
  - (a) Reviewed from time to time at the request of either party; and
  - (b) Amended with the written agreement of both parties.
25. This Agreement may be terminated at any time by written notice from either party to the other party.
26. On termination, clauses 28 to 30 relating to confidentiality continue to apply and are binding on the parties.

### **Confidentiality**

27. If either party supplies information to the other on a confidential basis, that other party must not divulge that information, or allow it to be divulged, to any other person without the written consent of the party that supplied the information.
28. The obligation in clause 27:
  - (a) ceases if the information is in the public domain for any reason other than the default of the party to whom the information was divulged; and
  - (b) is subject to compliance with any legal obligation to divulge that information.
29. Where clause 29(b) applies, the party subject to the legal obligation will, where practicable, consult with the other party and take into account that party's views as to the release of that information.
30. This Agreement and any correspondence by or on behalf of BOPRC are not confidential and shall be a public record of the process followed.

### **Reservation of Legal Rights**

31. Except as provided above, neither BOPRC nor Ngāti Pikiao has constrained its rights in any future legal process including resource management and judicial review processes.

### **Costs**

32. BOPRC agrees to contribute up to \$1,000 for costs associated with the preparation and signing of this Agreement, including legal costs for Ngāti Pikiao.



**DATED** this

day of

2016

Signed for and on behalf of Bay of Plenty Regional Council

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**Mary-Anne Macleod**  
**Chief Executive**

Signed for and on behalf of Ngāti Pikiao Environmental Society Incorporated

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**Fred Whata (or Joe Tahana)**