



RESPONSE TO MATAWII DRAFT DECISION CONDITIONS

PROVIDED BY

THE MATAWII EXPERT CONSENTING PANEL

6 OCT 2020

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And Chair Mere Mangu

For Te Rūnanga ā iwi o Ngāpuhi

14 October 2020

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Disclaimer:

Te Rūnanga ā Iwi ō Ngāpuhi acknowledge that this report has been prepared within the limitations imposed by strict time constraints and lack of engagement in the initial stages, lack of consultation, lack of partnership with mandated Ngāti Rangi Hapū representatives. Ngāti Rangi are acknowledged as tangata whenua that hold mana o te taiao for the proposed site and have only been consulted in the last two months. Despite this, all effort and care has been made to represent the information cited herein as it has been used and for its intended purpose within the specific reports cited.

He kōrero – opening statement

The Ngāpuhi position is we do not see 'progress' or 'projects' in isolation from its' entire environment; including the unseen. It is imperative we consider the whole area and address its' impact throughout the entire catchment area and its' downstream effects all along its' flow through to the Hokianga; rather than just the footprint of the reservoir area.

This piecemeal approach to the Taiao, to Papatūānuku has to stop. We can no longer carry on with 'Business as usual'. Western cultural norms have not served Te Taiao well. The change of approach must acknowledge and consider Māori indigenous practises and knowledge of the interconnectedness of the Creation (nature/environment).

We know there is an Industrial park development, yet there appears to be little consideration for tangata whenua concerns. The Far North District Plan, chapter 2 (referenced in the body of the report) and the RMA sections 5 and 6 should have been consulted to accompany the reservoir proposal.

We, the Rūnanga, are supportive of Ngāti Rangi and their report/response to the expert consenting panel. Ngāti Rangi have continued the dialogue pertaining to this process. While the Rūnanga has not perused other hapū reports, we are supportive of their submissions in principle, with the right of response and review of the report(s) proper.

Introduction

This report/commentary has been prepared in response to the invitation from the Matawii expert consenting panel regarding the panel's draft conditions of consent for the Matawii Water Storage Reservoir proposal provided by Te Tai Tokerau Water Trust.

As tangata whenua/mana whenua of the rohe, we have a unique and familial perspective; one which fosters a kinship connection to the land and water. While the titles/ownership and rights to the lands in question are no longer held by hapū/iwi, the connection to its' storied history, the bounty and richness of its' flora, fauna and fish species and the cultural harvesting practices are still held in high regard. Justice Williams provides this personal insight (Sept 19, 2020)¹:

The difference between property rights in a river, and kinship with a river, is that one entitles you to use it up, unless there's a parliamentary law that says you can't; the other imposes **obligations** because it's your relation (emphasis added).

This aligns with the long-held traditional belief that Māori/Ngāpuhi are connected physically and metaphysically to the Creation (nature/environment). The 'obligation', referred to by Justice Williams, manifests in feelings of responsibility and care; an ethos known as Kaitiakitanga. Hence the notion of Tangata Whenua, where Humans and the Environment are one. Kaitiakitanga is an 'obligation' that transcends the notion of 'property rights' to/in lands. The concept and observance of land and water as taonga, is written into Article 2 of the Te Tiriti. Moreover, 'taonga tuku iho', is an important distinction that explains the nature of these 'feelings of responsibility and care'.

Taonga can be considered in simple terms as 'gifts' or something 'highly prized' and is applied to tangible as well as intangible, cultural and intellectual property². Taonga pertaining to tangible physical objects of cultural value include rivers, forests and lands³. The role of kaitiakitanga places special emphasis on taonga tuku iho as a spiritual association with the rivers, forests and lands which have been passed down from generation to generation⁴. Coppins made this astute observation (cited in Garrity 1999)⁵:

[The] passage of taonga from generation to generation enhance[d] it's

¹ <https://www.stuff.co.nz/national/122794406/justice-joe-williams-on-te-reo-mori-and-synthesising-aotearoa-law>

² Lenihan, S. (1996) Whāia kia tata, whakamaua kia tina: A Time for Change: Intellectual Property Law and Māori. 8(1) Auckland University Law Review 211-214.

³ Angelo, A.H. (1996) Personality and Legal Culture. 26 VUWLR 395-410

⁴ Woods, S. PATENTS, PVRS AND PRAGMATISM: GIVING EFFECT TO WAI 262. (2014) *Canterbury Law Review* [Vol 19. 97-129].

⁵ Coppins. *Pākehā Citation of Māori Motifs, Symbols and Imagery* (1997) at 18 as cited in Brian Garrity "Conflict Between Māori and Western Concepts of Intellectual Property" (1999) 8 AULR 1193- 1210.

strength. The responsibility to care for taonga is passed down [and its'] relationship to humanity develops in this way. Taonga play an important role in Māori history by enabling it to be . . . expressed, conveyed and transmitted. Taonga are part of a lineage which stretches from the furthest past into the distant future. Living descendants are trustees of taonga by right of . . . genealogical descent (p. 1205).

To this, Angelo (1996) adds that “the prestige of a taonga strengthens with its age, the amount of history it possesses, and through its association with people of great mana⁶.”

Hence, the recommendations made in this submission refer heavily on hapū/iwi as kaitiaki exercising their obligations of kaitiakitanga over their spiritual association⁷ with the lands and waters within their ancestral landscapes.

The recommendations made on behalf of the Rūnanga to the EPA in the September submission had this ethos in mind. The following report has been prepared along similar lines.

Recommendations

The Te Rūnanga ā iwi o Ngāpuhi submission to the EPA dated 16 Mahuru 2020 made the following 13 recommendations (refer to pp9-10 of the Rūnanga submission). These recommendations form the basis for the response to the Matawii Expert Consenting Panel draft conditions.

- 1) It is proposed that a Cultural Mapping project in partnership with Ngāti Rangi be undertaken to Curate and harvest any knowledge from extant maps (held by LINZ) that fall within the reservoir footprint and surrounding environs. This can be coupled with and to other cultural data collection projects currently underway.*

The survey plans submitted as part of the evidential document bank for the proposed Dam provide another level of Mātauranga collected at the time of survey; some maps date back to the original subdivision of the Māori land blocks. Curating this information would provide a clearer picture of the ancestral landscapes that were not collected/referred to in the Cultural Impact Assessment report provided to/by the applicant. It is our view that not enough has been done to provide a full picture of the cultural landscape and the value of water as a taonga. See item 5 below.

⁶ Angelo, A.H. (1996) Personality and Legal Culture. 26 VUWLR 395-410, pp397-398.

⁷ Woods, S. PATENTS, PVRS AND PRAGMATISM: GIVING EFFECT TO WAI 262. (2014) *Canterbury Law Review* [Vol 19. 97-129].

- 2) *We advise that Ngāti Rangi be given an opportunity to be consulted on culturally sensitive sites with the proposed reservoir footprint and the immediate environs.*

Ngāti Rangi, as tāngata whenua in the lands/waters in question, have customary rights and responsibilities associated with freshwater resources in the region. This is expressed through the exercise of mana whenua, rangatiratanga, kaitiakitanga and manaakitanga, and is guaranteed by Te Tiriti o Waitangi. As Kaitiaki, ensuring that freshwater management recognises and provides for these rights and interests is critical to enabling tāngata whenua to protect water as a taonga for future generations. As a matter of national importance, the RMA (see sections 5 & 6 of the Act⁸) recognises the relationship of Māori to freshwater.

The rivers, groundwater, lakes, and wetlands continue to provide Ngāti Rangi with food, spiritual nourishment, cleansing, modes of transport, and communication as well as medicinal, building, and weaving materials. Water is a sensitive and complex taonga for all Māori around the country. In this case, Ngāti Rangi has a duty to respect, protect, and restore. Their mana whakahaere is balanced by the inherent responsibilities that come as Kaitiaki of these specific water bodies. Hence, this places the expectation that each generation of guardians leaves all water bodies in a healthy and balanced state to be enjoyed and cared for by future generations.

The issues and concerns are clear. They include: (1) water quality; (2) point and non-point source discharge; (3) storm water; (4) riparian margin management; (5) water takes; (6) Diversions and water mixing; (7) Culverts, weirs and dams; (8) Wetland drainage; (9) and River and drain clearance.

It is not within the scope of this response/report to discuss these issues in depth; but to merely bring these to your attention. We urge you to consider the Ngāti Rangi response in these matters. The Rūnanga consider the following conditions pertinent to the 9 issues above:

- That water flowing out of this region will be clean and healthy. This will ensure Ngāti Rangi's obligations to their whānau/relatives downstream of the impact zone are met.
- That there will be no discharges (either point source or non- point source) that impact on water quality.
- That land is utilised throughout the region appropriately as purification measure for wastewater prior to discharge into the waterways.
- That storm water is captured and treated, and where possible utilised as a resource. Where released to streams, it is released in a manner aligned with natural flow regimes.
- That all water bodies and wetlands in the Ngāti Rangi region have planted riparian margins.

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http://www.legislation.govt.nz/act/public/1991/0069/latest/DLM231905.html?search=sw_096be8ed81a1ddfb_wahi+tapu_25_se&p=1

- That water takes are managed in a way that allows our rivers and streams to be healthy and flourishing.
- That waters flow in their natural catchments.
- That culverts, weirs, and dams allow for native fish migration but block other species access to uninvaded areas.
- That all water bodies and wetlands are free from digging.

At the time of writing up the September Rūnanga submission, limited discussions were held with the Ngāti Rangī researcher who was in the process of compiling a cultural report pertaining to the proposed dam. Timing did not permit extensive discussions nor aid in the collection of information for their report, although we understand that the timing of the report was not considerate; particularly to the Rūnanga as Te Tiriti Partners. However, we understand that the Ngāti Rangī researcher managed to deliver her report to EPA.

Referring to item one above, it is our **recommendation** that a cultural mapping project is commissioned to supplement and strengthen the Ngāti Rangī cultural landscape in order to provide a full account of their cultural knowledge of the waters/landscapes and their historic engagement within the reservoir footprint and environs.

- 3) *It is apparent that no work has been done to look at the presence of wāhi tapu sites within the reservoir footprint and immediate environs.*

Refer to items one and two above in terms of commissioning a cultural mapping project (CMP). A full CMP would uncover information contributed by ancestors of the day. This should be complimented with knowledge and oral narratives which has been handed down through the generations.

- 4) *The impact on the natural habitat and cultural practices pertaining thereto needs to be addressed. It is recommend that a report detailing cultural harvesting and practices of hapū iwi within the region is required.*

The proposed site has varying degrees of riparian planting. Both introduced and native species observed. The observed wetlands within the reservoir site, range from small scale to larger pockets with species diversity apparent throughout. The potential for these areas to be regenerated are of utmost importance to Ngāti Rangī and to the impact of climate change.

The change in land use for this site and some of the wetlands set aside to rejuvenate and recover would be advantageous for these taonga species to thrive again. This will offset the impact of climate change. It is thought that the working cattle farm contiguous to the area has apparent negative impacts for the ecosystem and waterways that are present on the proposed site.

Wetland species have been noted in the reports submitted to the EPA in the original submissions. There is evidence of kuta (*Eleocharis sphacelata*), raupo (*Typha orientalis*) and flax (*Phormium tenax*). These wetland species are some of the most revered traditional weaving for Ngāti Rangī and Māori. Local knowledge indicates that Kuta only grows in certain conditions and at certain times of the year. Ngāti Rangī rohe has been well-renowned for this cultural harvest of a taonga wetland species. Ngāti Rangī would welcome the opportunity for exploring cultural monitoring of this wetland species.

The Rūnanga concur with Ngāti Rangī that due to the threatened status of these taonga species, we view this area as an important cultural and harvesting site(s). Therefore it is important to prioritise restoring these habitats to their former status of abundance.

The following is recommended:

To mitigate adverse cultural effects on Ngāti Rangī, the Rūnanga support the following recommendations:

- For the avoidance, to the greatest extent practicable, the disturbance of, or disposition on, the waterways in order to allow for the maintenance of the mauri of wai;
- Where the disturbance of the ecosystems is not avoidable, limiting the disturbance of contaminated land to the minimum extent required to reduce the potential for any disturbed contaminants to be discharged into the air, land or water;
- For the avoidance, to the greatest extent practicable, the cultural degradation of the environment, both tangible and intangible, in order to allow for the maintenance of the mauri of Proposed Matawii Water Storage Reservoir.
- The impact on the natural habitat and cultural practices pertaining thereto needs to be addressed. Therefore, it is recommended that a report detailing cultural harvesting and practices of Hapū within the region is required.

5) *A complimentary cultural report to the Hydrology assessment regarding the whakapapa and tapu nature of water needs to be undertaken.*

To support the recommendation for a cultural report of the waterways from a Māori/Rūnanga/Ngāti Rangī lens, refer to items one through to four above.

Garrity (1998) concluded that “rivers as taonga are said to include the actual water as well as the fish and the river bed (p. 1197).⁹” It is clear in the documents provided to the EPA that the notion of the rivers in question are taonga has not been fully explored. The Mohaka river report to the

⁹ Garrity, B. (1998) “Conflict Between Māori and Western Concepts of Intellectual Property” (1999) 8 AULR 1193-1210.

Waitangi Tribunal (WAI 119), as an example, spoke of the river as a taonga. Moreover, it is the source of mana and identity for the local Pahauwera iwi¹⁰.

For Ngāpuhi (and for that matter, other iwi around the country), water has whakapapa, a tapu and a measure of mauri as well as a spiritual association with the water and environs. None of these values were adequately captured nor recognised with any measure of consideration in any of the documents, with the exception of the Cultural Impact Assessment report¹¹, commissioned by and for the applicant.

Section 4 of the CIA report did refer to the kaitiaki of Ngāwhā: “The Kaitiaki for Ngāwhā and some of the waterways of Ngāpuhi is a taniwha named *Takauere*.”

Further, “Takauere is often referred to as being not just in, but also of, Northland’s water bodies themselves. In particular, Ngāwhā holds a special place of significance as “the eye [and] brain” of Takauere: (Te Ahi Ko Mau submission) (p. 11).

It is obvious within the research conducted around this kaitiaki ancestor, that Takauere traverses in and through the waterways within the region. This underlines the cultural importance of the waterways not just to the local hapū/iwi but to the whole of Te Tai Tokerau.

Hence the **recommendation** for a complimentary report on the cultural perspectives on the tapu of water.

6) The global pandemic and the measures imposed by the Government coupled with climate change raises serious implications for water supply for and to Kaikohe. A water strategy in partnership with Ngāti Rangī is required that will provide basic human rights to water within the region.

The COVID-19 pandemic and the lockdown measures have had an impact on the source and supply of clean drinking water. The global threat of COVID-19 has forced hapū/iwi to innovate in order to protect the vulnerable age groups, particularly in the far north regions. Measure need to be taken to prepare and adapt to similar future threatening events. And clean water will be under pressure.

Access to clean drinking water is an issue in the far north particularly approaching summer season. This will further impact on whānau and hapū access to healthy drinking water.

¹⁰ Waitangi Tribunal Report (1992) Mohaka River Report (WAI 119). BROOKER AND FRIEND LTD WELLINGTON.

¹¹ Appendix I: https://www.epa.govt.nz/assets/Uploads/Documents/Fast-track-consenting/Matawii/LP16_Matawii_Appendix_I_Cultural_Impact_Assessment.pdf

7) *What is the FNDC commitment to providing municipal water supply to Kaikohe and other regions?*

Development and subsequent contribution to local, national and international effective modelling processes and procedures, with particular reference to pandemic crisis and water supply.

Resilient (remote) communities with the capacity and skill set such as Ngāti Rangi kaitiaki, should be encouraged with the requisite skills, knowledge and training to self-manage their watersheds. This will inevitably lead to future employment. This will include: specific skill sets of assessing vulnerability to COVID-19 and investigating the actions to take in order to reduce vulnerability, including water quality testing.

With the impending legislation changes to water quality, known as the Taumata Arowai, the benefits of this type of innovation will could serve as a case study to assist other small water providers around the country. In particular, hapū/iwi who should be encouraged to self-manage their resources as kaitiaki. Self-reliant kaitiaki with requisite capabilities on the ground, may provide the key to managing watersheds around the country.

8) *Wetlands removal requires compensation planting to offset the effects of climate change and maintain the balance in the ecosystem. Measure the carbon positive footprint of the wetlands. As outlined in Puhoi Stour Report appropriate eco-mitigation areas developed in partnership with Ngāti Rangi.*

See item four above.

Compensation planting onsite or nearby is critical given the impact of climate change. Compensation for the removal of the wetlands affected by the reservoir must be in the form of planting. The impact of climate change on the environment is a critical issue for the world. The iwi Leaders Group leads the discussion around the country. Wetlands are imperative to offsetting the impact of climate change and the pressure it will place on the waterways and the supply of clean drinking water to the region.

Thus, it is **recommended** that replanting of native species/trees be undertaken to offset the removal/impact on the wetlands catchment area.

9) *Part of the lifecycle of the tuna (eel) is the migratory patterns to and from the sea which would result in population decline. Eel migratory patterns need to be maintained.*

The presence of native fish species signal that there is a flourishing ecosystem in the Kopenui stream. This stream is within the reservoir footprint. These species were discovered in the 2019 fresh

water fish surveys conducted by NZ Environmental. This evidence is supported by kaumātua of the region as noted by Ngāti Rangi research/reports.

The detail of the Ecological Assessment Report Appendix F, authored by Puhoi Stour and Tonkin and Taylor Ltd is particularly interesting, especially sections four and five¹²: Freshwater ecological assessment and Terrestrial and wetland ecological assessment.

Fish surveys along the proposed impact area of the Kopenui stream and along the Wairoro stream at Te Pua Road and Cumber road are of significance and interest to Ngāpuhi. For example, the Northland Mudfish (p. 8), fish spawning habitat (p. 9), raupō and podocarps within the project footprint (p. 10) and the potential for a gecko and kauri snail habitat was noted (p. 10). DOC note the presence of mudfish within 25 km of Omapere⁹. The Puhoi document reports that the “Northland mudfish are a threatened species with a very restricted range. [And] It is important to ensure that construction of the proposed reservoir does not result in any habitat loss for the species. It is recommended that more intensive surveys be carried out in Spring to confirm that the species is absent (p. 13).”

The presence of Shortfin eel (*Anguilla australis*) were confirmed while longfin eel (*Anguilla dieffenbachii*) were found within the reservoir footprint (p. 12).

Kōura (*Paranephrops planifrons*) were abundant in the surveyed area and juvenile kāeo (*Echydella menziesii*), a fresh water shellfish, were embedded in the stream channel (p. 12).

The following are **recommended**:

- The applicant must provide fish passage in line with current best practice for all in stream structures. These must be in place no less than six months from the grant of consent. This may include but is not limited to, wet passage for climbing stage species and Tuna. Retreats for long distance climbs identified on the spillway of the Dam and the overflow.
- The applicant must undertake fish transfers from the water tributaries on no less than 5 occasions in any one year.
- The applicant must provide a report of each of the fish transfers including, the number, size and health of tuna(eels). The presence and abundance of inanga, kokopu, torrent fish and any other native fish species collected. The weather on the day of the transfer, the gps location the fish were captured from and released. The time the collection started and the time the fish were released.
- Exotic species must not be transferred.
- The applicant shall undertake no less than three ecological reports each year at Ngāti Rangi identified site locations for the Matawii Water Storage Reservoir. The report must include

¹² https://www.epa.govt.nz/assets/Uploads/Documents/Fast-track-consenting/Matawii/LP16_Matawii_Appendix_F_Ecology.pdf

three locations being the northern, southern sides of the dam, upstream and downstream of the dam in relation to the water level recorder. The report must include fish species; invertebrates; algae and cyanobacteria and; instream vascular flora.

- If the reports show depleted native flora and fauna health and abundance, the applicant must propose a remedy within 3 months of the report and present that remedy to Ngāti Rangī for input and participation.
- The instream fauna values of the dam will be sufficient to allow for sustainable harvesting of tuna (number will be relative to survey and monitoring data received) per year from the waterways. The number will represent a realistic customary take of tuna by Hapū members.

This report acknowledges sections 77-79 of the Expert Consenting Panel conditions in the section entitled: Operation of the Matawii Water Storage Reservoir. See Appendix C below. Providing upstream and downstream passage for native eels. And for documentation of that passage along with consultation with DOC. We also add that consultation must take place with the te Tiriti Partners; that is, kaitiaki representatives of hapū of those rivers in question.

This report also acknowledges Appendix A: Construction Activity Controls, section 49 which provides for the upstream and downstream passage of indigenous freshwater fish during construction of the dam and reservoir area.

This report also acknowledges Appendix B: Fish Screens to prevent entrainment of indigenous fish. It is noted that the fish screens are to be designed in accordance with the document "Fish screening: Good practice for Canterbury, NIWA Client Report: CHC2007-092, October 2007".

10) A pertinent question is: Has sufficient work been done to ascertain wāhi tapu or other places that are culturally significant to local hapū/iwi?

The RMA and the Far North District Plan provide guidance for consideration. In particular, Section 5¹³ of the Act which refers to the sustainable management of natural and physical resources; in particular the specific provisions to/for Māori.

Section 6¹⁴ of the Act also provides for a number of matters of national importance such as (a) the relationship of Māori and their culture and traditions with ancestral lands/landscapes, wāhi tapu and water and other taonga. And (b) reference to the protection of historic heritage from inappropriate subdivisions, use and development. This includes sites of significance which Māori refer

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http://www.legislation.govt.nz/act/public/1991/0069/latest/DLM231905.html?search=sw_096be8ed81a1ddfb_wahi+tapu_25_se&p=1

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http://www.legislation.govt.nz/act/public/1991/0069/latest/DLM231907.html?search=sw_096be8ed81a1ddfb_wahi+tapu_25_se&p=1&sr=1

to with the broad term wāhi tapu.

The Far North District Plan provides the following insights in chapter 2, the tangata whenua section¹⁵. Refer to subsection 2.7.3 which recognises and provides for the protection of wāhi tapu and other ancestral sites and 2.8.5 which again refers to wāhi tapu as well as other taonga to be identified and protected by the provisions in the district plan.

Hence, the focus on wāhi tapu within the footprint of the reservoir and the immediate environs that informs the following recommendations:

It is **recommended** that:

- Ngāti Rangī is contacted immediately and consulted at all stages of the development
- An archaeological assessment is undertaken in consultation with Ngāti Rangī that will take into consideration appropriate protocols which are approved by Ngāti Rangī.

This will ensure that an Accidental Discovery Protocol is adhered to. This will also protect the potential unearthing of archaeological material.

Notes for protocols to adhere to:

- Contact Ngāti Rangī immediately upon unearthing archaeological material
- Cease work immediately
- Engage and archaeological assessment in consultation and agreement with Ngāti Rangī
- Consultation with Ngāti Rangī in advance should Te Tai Tokerau Water Trust seek to undertake any earthworks and/or drilling activities to ensure that the proposed works are not in the same location as known wāhi tapu (see (e))
- Enable appropriate kawa/tikanga (cultural rites) to be performed ahead of any planned works
- Ngāti Rangī will nominate appropriate kaitiaki for this purpose (a-e above)
- Should a (new) wāhi tapu or archaeological site is unearthed, that all works on site cease and the protocols outline above are enacted forthwith.

11) There are concerns about the ongoing hapū/iwi representation on the advisory Board (and its' successor) that will monitor hapū/iwi cultural concerns with an appropriate succession plan.

This report notes in Appendix E: Kaitiaki Liaison Group (KLG), Sections 118-121, the provision for representatives of the three hapū that will monitor hapū and iwi cultural concerns pertaining to the reservoir and its' environs.

It is **recommended** that consultation take place with the respective hapū that have mana

¹⁵ <https://www.fndc.govt.nz/files/assets/public/objectivedocuments/policy-and-planning-pol/district-plan/operative-plan-2009/2-tangata-whenua.pdf>

whenua rights and interests in the reservoir footprint and the environs to inform the appropriate make-up of the KLG.

12) Consultation with hapū/iwi pertaining to access of the swamp maire for cultural purposes is critical.

Consultation with hapū/iwi pertaining to access to the swamp maire for cultural purposes has been noted in Appendix D. This report acknowledges the measures for recovering swamp maire and the involvement of hapū/iwi Kaitiaki in the process as per Appendix D Ecological Management, section 83(f). The impact on the natural habitat need to be addressed. Moreover, the cultural practices that hapū adhere to within the natural habitat are important.

It is **recommended** that a report detailing the cultural harvesting practices of hapū within the region is undertaken.

13) That the contractors “Undertake consultation with Tangata Whenua and in association with the Project Archaeologist and implement any taonga Ngāpuhi protocols or archaeological investigation or monitoring requirements if archaeological sites, taonga or human remains are discovered.”

Refer to protocol notes in section 10 above for recommendations.

This report acknowledges the involvement of kaitiaki in the recovery of any taonga or kōiwi found in the construction site as per Appendix A: Construction Activity Controls, section 48.

Relevant Sections of the Draft Conditions of Consent

The following sections of the draft conditions of consent have been referred to in this document.

- 1. Construction Activity Controls*
- 2. Fish Screens*
- 3. Operation of the Matawii Water Storage Reservoir*
- 4. Ecological Management*
- 5. Kaitiaki Liaison Group*

Parts of each section have been cut and pasted into an Appendices section below

Concluding Remarks

Water as a taonga and the role of hapū/iwi kaitiaki in the water space has not been explored or considered in any of the documents presented to the EPA for consideration. Apart from the Critical Impact Assessment¹⁶ report commissioned by the applicant that refers to the kaitiaki taniwha Takauere and its' connection to the waterways, there is insufficient evidence of hapū/iwi association with the rivers that form part of the proposed dam storage reservoir.

The traditional belief that Māori/Ngāpuhi are associated physically and metaphysically to the Creation fosters the ethos of Kaitiakitanga over the water as a taonga. Not just any taonga, but a taonga handed down over many generations of inhabitation of the region; a taonga that has served its' people and the environs over many centuries. It is this ethos that drives the push for the voices of Ngāpuhi in the water space to be heard, recognised and acknowledged. Hence the insistence for an in-depth and discerning cultural mapping exercise and a cultural water report.

Finally, to quote Coppins¹⁷:

Taonga are part of a lineage which stretches from the furthestmost past into the distant future. Living descendants are trustees of taonga by right of . . . genealogical descent (p. 1205).

We owe it to the future generations.

¹⁶ Appendix I: https://www.epa.govt.nz/assets/Uploads/Documents/Fast-track-consenting/Matawii/LP16_Matawii_Appendix_I_Cultural_Impact_Assessment.pdf

¹⁷ Coppins. *Pākehā Citation of Māori Motifs, Symbols and Imagery* (1997) at 18 as cited in Brian Garrity "Conflict Between Māori and Western Concepts of Intellectual Property" (1999) 8 AULR 1193- 1210.

List of Appendices

Appendix A: Construction Activity Controls

Appendix B: Fish Screens

Appendix C: Operation of the Matawii Water Storage Reservoir

Appendix D: Ecological Management

Appendix E: Kaitiaki Liaison Group

Appendix A: Construction Activity Controls

(Sections 47-50)

47. The construction operations must not give rise to any discharge of contaminants including dust at or beyond the property boundary, which is noxious, dangerous, offensive or objectionable to such an extent that it has, or is likely to have, an **adverse effect on the environment**.
48. In the event of **archaeological sites or kōiwi being uncovered**, activities in the vicinity of the discovery must cease and the Archaeological Site Instruction and Methodology (Archaeological Site Instruction) contained in the report titled 'Archaeological Assessment of the Proposed Matawii Water Storage Reservoir, 5435 State Highway 12, Kaikohe, Geometria Limited, dated 8 July 2020', must be initiated. In accordance with the Archaeological Site Instruction, the Consent Holder must initiate the following procedures:
 - a. All **work** in the vicinity of the discovery must **cease** and the FNDC Responsible Officer advised;
 - b. Secure and mark the area to ensure the archaeological material is **not further disturbed**;
 - c. **Inform** the **Project Archaeologist, and Kaitiaki** (if the archaeologist and Kaitiaki are not present), and Heritage New Zealand Pouhere Taonga and in the case of kōiwi (human remains) the New Zealand Police;
 - d. The Project Archaeologist and cultural monitor/kaitiaki will inspect the find and the Project Archaeologist will advise the Site Supervisor and Project Manager as to whether the find is or is not archaeological, and if archaeological, whether it is a significant find such as koiwi **tangata/human remains or taonga tuturu/a protected object** and enact the appropriate protocol.
 - e. Works in the site area must not recommence until authorised by the Kaitiaki, Heritage New Zealand Pouhere Taonga (and the NZ Police in the case of kōiwi) to ensure that all statutory and cultural requirements have been met.
 - f. The Consent Holder must notify the FNDC Responsible Officer prior to the recommencement of work, and copies of all relevant authorisations must be provided to that Officer

Advice Notes:

1. It is expected that all parties will work towards work recommencing in the shortest possible time frame while ensuring that any archaeological sites discovered are protected until as much information as practicable is gained and a decision regarding their appropriate management is made, including obtaining an archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014 if necessary. Appropriate management may include recording or removal of archaeological material.
 2. The Consent Holder is advised to obtain an archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014 covering all areas where archaeological sites may be modified or destroyed during the project.
49. The upstream and downstream **passage** of **indigenous freshwater fish** must be provided for and be effective under the flow range conditions of the Kopenui Stream during construction of the dam and reservoir area.
 50. All construction activity must comply with the **certified Indigenous Freshwater Fauna Salvage and Relocation Plan, Bat Management Plan, Avifauna Management Plan, and Lizard Management Plans**.

Appendix B: Fish Screens

(Section 65-67)

65. All water intakes (from the reservoir and from streams) must be screened so as to minimise harm to and **prevent entrainment of indigenous fish**. The fish screens must be designed in accordance with the document **"Fish screening: Good practice for Canterbury, NIWA Client Report: CHC2007-092, October 2007"**. Prior to installing any fish screen, the Consent Holder must submit a report to the NRC's Responsible Officer containing the design plans and specifications for the screens and their installation and operation and maintenance plans for the screens, together with a letter from a person experienced in New Zealand freshwater ecology and fish screening techniques certifying that the screen meets the requirements of the document "Fish screening: Good practice for Canterbury, NIWA Client Report: CHC2007-092, October 2007". As a minimum, screen must limit the intake velocity across the screen to less than 0.3 metres/second and have no holes or slots with a diameter or width greater than 5 millimetres. Screening material (mesh, profile bars or other) on each screen must have a smooth surface and openings.

Advice note: The consent holder must also obtain approvals about fish passage from the Director-General of Conservation under clause 43 Freshwater Fish Regulations 1983.

66. Within 12 months of fish screen installation a certificate must be provided to the NRC Responsible Officer, by a person with experience in freshwater ecology and fish screening techniques, to certify that the fish screen has been installed in accordance with the details provided to NRC in accordance with **Condition 65**.

67. The intake structures and fish screens must be operated and maintained in accordance with the operation and maintenance procedures as established through Condition 57 above. A record must be kept of all the maintenance carried out and provided to NRC Responsible Officer upon request.

Appendix C: Operation of the Matawii Water Storage Reservoir

(Section 77-79)

77. Upstream and downstream passage for native eels must be provided during the operation of the Matawii Water Storage Reservoir. The methods for provision of native eel upstream and downstream passage during the operation of the Matawii Water Storage Reservoir must be documented in the Operational Reservoir Management Plan. Prior to finalising the eel passage methods, the Consent Holder must consult with the Department of Conservation regarding the methods proposed to be used.
78. Within one year following completion of the dam and for a period of not less than two consecutive years but not exceeding five consecutive years, the Consent Holder must carry out a quantitative annual survey specifically designed to determine the relative success of upstream movement of eels into the upstream Kopenui Stream catchment. The findings of each annual survey must be provided to the NRC's Responsible Officer by 1 May each year
79. The Operational Reservoir Management Plan must be reviewed following two full years of reservoir operation for the purpose of verifying the performance of the Plan, in particular in meeting residual flow requirements. The review, including any proposed changes to improve the performance associated with meeting residual flow and fish passage requirements, will be submitted to the NRC's Responsible Officer before the end of the fifth year of reservoir operation.

Appendix D: Ecological Management

(Section 83-86, 89-90)

83. The Consent Holder must engage a suitably qualified expert(s) to develop the following ecological management plans (EMP) for certification in accordance with **Conditions 4 to 7** of these consents:
- a. **An Indigenous Freshwater Flora and Fauna Salvage and Relocation Plan** for all parts of the site where works will occur in stream or wetland habitat that will be inundated.
 - b. **Bat Management Plan.**
 - c. **Avifauna Management Plan.**
 - d. **Lizard Management Plan.**
 - e. **Stream Enhancement Planting Plan** to achieve at least 0.5ha of stream bed habitat enhancement including up to 20 m of riparian planting on each bank and weed control on the tributary streams above the dam.

The objective of these plans is to as far as is practicable, plan and implement actions to avoid, remedy and/or mitigate the actual and potential effects of the Matawii Water Storage Reservoir project on the freshwater, bat, avifauna and lizard values affected by the project, and to ensure implementation of the offset and compensated measures contained in the Biodiversity Offset and Compensation Plan required under **Condition 85**.

Each plan must be in accordance with relevant sections of the document titled “Matawii Water Storage Reservoir: Assessment of Ecological Effects. 10 July 2020. Prepared by Puhoi Stour Ltd in association with Tonkin & Taylor Ltd. PSL Report Number 2020/02”, and must include, but not be limited to:

- a. Providing the methodologies that will be used to identify and quantify (where reasonably practicable) the presence of indigenous flora and fauna within the proposed area of works, beyond a desktop assessment; and
- b. Providing the methodology for the protection, relocation, replacement or removal of flora or fauna where required; and
- c. Describing monitoring and reporting requirements to the NRC, FNDC and other relevant authorities; and
- d. Details of monitoring, reporting and response actions to be undertaken when EMP objectives are not met. The Bat Management Plan (BMP) is to assess if it is feasible to leave potential bat roost trees (trees having a diameter at breast height of 15cm or greater) standing in the inundation area. If determined feasible the trees will be left standing. The BMP is to include protocols for removing potential roost trees that minimises the killing and/or injury to bats. Planting of trees around the edge of the inundation area to enhance bat habitat is also to be considered.
- e. The Lizard Management Plan must detail the residual effects on lizards including the mortality of individuals (including At Risk species) and permanent habitat loss and provide details to adequately address and compensate for the residual adverse effects on lizards.
- f. The Indigenous Freshwater Flora and Fauna Salvage and Relocation Plan must require, in consultation with the Department of Conservation, the investigation of the possibility

and feasibility of translocating the 23 mature swamp maire trees (and other wetland material e.g. substrate and plants) to another site. This will include considering the soil type and hydrology and protocols to minimise damage to roots during the translocation (for example, using the guidance of a wetland ecologist and arborist).

84. The plans listed in Condition 83 must be peer reviewed by a suitably qualified and experienced ecologist and must incorporate the peer review comments and recommendations.

Advice Notes:

Approvals may also be required under the Wildlife Act 1953, so the consent holder should ensure that the methodologies adopted under this condition do not conflict with any requirements of that Act.

While the bat roost trees left standing may eventually decay, they may provide habitat for a portion of the time the offset habitat is maturing

85. The Consent Holder must, at least one month before construction work begins, submit to the NRC and the FNDC Council Responsible Officers for certification, a Biodiversity Offset and Compensation Plan prepared by a suitably qualified and experienced ecologist and in general accordance with the Offset and Compensation Plan set out in the following document: *David Pickett, Justine Quinn, Josh Markham, and Martin Neale. 24 July 2020. Matawii Water Storage Reservoir – Offset and Compensation Plan. Prepared by Puhoi Stour Ltd in association with Tonkin & Taylor Ltd. PSL Report Number 2020/09.*

86. The Biodiversity Offset and Compensation Plan (BOCP) must be implemented by the Consent Holder and it must include, but not be limited to:

- (a) Offset objectives to:
 - (i) achieve no net loss and preferably a net biodiversity gain as derived from the offset accounting model across ecosystem type, composition and structure;
 - (ii) minimise the delay between the loss of biodiversity from the project and the gain or maturation of biodiversity outcomes;
- (b) Compensation objectives (based on proven and feasible ecological actions) to address the loss of individual Threatened or At Risk lizards and lizard habitat and any adverse effects on wetland bird foraging and roosting habitat;
- (c) Considering existing hydrology and wetland connectivity when selecting an appropriate wetland offset site;
- (d) Considering wetland offset plants that are suitable for nesting and foraging of wetland birds;
- (e) Planting proposals and plans for environmental enhancement of the Kopenui Stream upstream and downstream of the Matawii Water Storage Reservoir, including planting that is in general accordance with the “Draft Landscape mitigation concept” forming Figure 2c of the LVAA;
- (f) The measures to be undertaken to strengthen and complement the natural vegetation patterns within the site and immediately surrounding area;
- (g) Specifically addressing any adverse effects on the Significant Natural Area (SNA) – Kopenui Stream Remnants;
- (h) Requiring the relocation of existing swamp maire trees if that is practicable;

- (i) Identification of other sites where ecological restoration and enhancement activities will take place and how, including but not limited to, initial and operational pest plant and animal eradication measures;
- (j) Legal mechanisms proposed to protect areas used for ecological restoration and enhancement activities in perpetuity including the fencing of those areas and the exclusion of grazing stock from them;
- (k) Annual monitoring of areas used for ecological restoration and enhancement activities and whether or not the objectives, performance targets and performance standards specified in the BOCP and requiring the replacement of any failed plantings;
- (l) Provision of five-yearly reports to the NRC and the FNDC Responsible Officers outlining the results of the monitoring under (k).

89. Prior to any work to remove the kauri tree identified on the project site, the Consent Holder must engage a suitably qualified and experienced person to assess whether the tree has kauri dieback disease (the presence of the pathogen *Phytophthora agathidicida*). If kauri dieback disease is present, then the consent holder must engage a suitably qualified and experienced person to prepare a **Kauri Dieback Disease** TK Risk Management Plan prior to removal work starting, and all work must be undertaken in accordance with that Plan.

90. In the event that the presence within the project site is confirmed of fauna or flora classified as Threatened or At-Risk under the New Zealand Threat Classification System, and which has not already been addressed in an ecological management plan and the Biodiversity Offset and Compensation Plan, then:

- a. The Consent Holder must immediately notify the Department of Conservation, and
- b. If the applicable EMP under **Condition 83** has not yet been submitted, the Consent Holder must ensure that the plan appropriately addresses the presence of that species; or
- c. If the applicable EMP under **Condition 83** has already been submitted, the Consent Holder must review the plan to ensure that it appropriately addresses the presence of that species and must then submit the reviewed plan for certification; or
- d. If there is no EMP under **Condition 83** which is applicable to that species, the Consent Holder must prepare a further plan which does address that species and must then submit the plan for certification; and in all cases the Consent Holder must review the Biodiversity Offset and Compensation Plan required under **Condition 85** to ensure that it appropriately addresses the presence of that species and must then submit the reviewed plan for certification.

Appendix E: Kaitiaki Liaison Group

(Section 118-121)

118. The Consent Holder must establish a **Kaitiaki Liaison Group** (KLG) in accordance with the following requirements:
- a) The purpose of the KLG must include, but not be limited to, the following:
 - i. To engage on an on-going and regular basis about iwi cultural values and interests associated with the construction, operation and management of the Matawii Water Storage Reservoir (MWSR);
 - ii. To promote the flow of information between iwi and hapū and the Consent Holder so as to, wherever possible, address any issues that may arise; and
 - iii. To discuss the results of monitoring and any matters that may arise as a result of the monitoring.
 - b) The KLG must initially comprise up to **two representatives from each of Te Rūnanga a Iwi o Ngāpuhi, Ngā Uri o Hua, Ngāti Rangī and Ngāti Whakaēke**.
119. The Consent Holder must ensure that members of the KLG are provided with the opportunity and facilities to meet:
- a) At least **30 working days** prior to the start of any site preparation activities; and
 - b) Not less frequently than **biannually** during the construction of the MWSR and thereafter annually throughout the operation of the MWSR, unless all members of the KLG agree there is no need for a meeting.
120. The time, date and venue of proposed meetings must be notified to members of the KLG. **Minutes** of the KLG meetings must be kept by the Consent Holder and be made **publicly** available.
121. The Consent Holder must meet the reasonable **administrative costs** of the KLG meetings (e.g. meeting invitations; meeting venue; preparation of meeting minutes).

Advice Note: In the event that it is not possible to establish a KLG or convene meetings through lack of interest or participation from iwi and hapū, then such failure to do so will not be deemed a breach of these conditions. Should iwi and hapū wish to re-establish meetings after a period of inactivity then the conditions above must continue to apply