

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of applications by Far North District Council to renew the resource consents associated with the operation of the wastewater treatment plants serving Opononi/Omapere and Kohukohu

**LEGAL SUBMISSIONS ON BEHALF OF
FAR NORTH DISTRICT COUNCIL**

Counsel instructed:
B S Carruthers KC
Shortland Chambers
F +64 9 309 1769
PO Box 4338
Auckland 1140

1. INTRODUCTION

- 1.1 Te Hokianga Nui a Kupe (**Hokianga Harbour**) is a taonga of cultural, spiritual and environmental significance.¹
- 1.2 Four settlements along the edge of the harbour are serviced with wastewater reticulation: Omapere, Opononi, Rawene and Kohukohu.
- 1.3 Three of those four settlements are serviced by the two wastewater treatment plants (**WWTP**) the subject of this hearing:
- (a) The WWTP at the end of Baker Drive, Omapere² that treats³ wastewater and discharges on an outgoing tide via a submerged outfall pipe extending approximately 400m offshore opposite the mouth of the Waiarohia Stream⁴ serves the residential and light commercial areas of Omapere and Opononi;⁵ and
 - (b) The WWTP on reclaimed land on the northern side of the harbour⁶ that treats liquid septic tank effluent in a facultative pond and gravity discharges into a channel in the adjacent tidal mudflats before flowing into the main body of the harbour 240m south⁷ that serves the small⁸ residential and light commercial area of Kohukohu.
- 1.4 The WWTP servicing Rawene and Kaikohe also discharge into the Hokianga Harbour.⁹
- 1.5 FNDC acknowledges that the discharge of treated human wastewater into the Hokianga Harbour is abhorrent in te ao maori.¹⁰ It is actively investigating land disposal schemes for the Rawene and Kaikohe WWTP

1 Kohukohu CIA, page 10.

2 See Evidence of Martell Letica, para 6.12 and Appendix A and B.

3 By way of an inlet screen, partially mixed aerated lagoon, maturation pond, surface flow wetland and effluent storage pond: Evidence of Becky Macdonald, para 23.

4 Evidence of Becky Macdonald, para 36.

5 Permanent residential population of 546 at 2018 Census with approximately 160 holiday homes: Evidence of Becky Macdonald, paras 24 – 25.

6 Evidence of Martell Letica, para 6.18.

7 Evidence of Becky Macdonald, para 77.

8 Permanent residential population of 168 at 2018 Census: Evidence of Becky Macdonald, para 78.

9 Evidence of Melissa Parlane, para 13.

10 Evidence of Melissa Parlane, para 14; Evidence of Martell Letica, para 8.11(d); Kohukohu CIA, page 75.

(as well as at Ahipara and Taipa further to the north).¹¹ However, for both the Opononi and Kohukohu WWTP, discharging to the coastal marine area remains the Best Practicable Option (**BPO**).¹²

1.6 FNDC is therefore seeking consent to continue to discharge into the coastal marine area from these two WWTP. It also seeks the necessary discharge consents for odour and seepage at each WWTP,¹³ and the occupation permit required for the existing pipeline at Opononi.¹⁴

1.7 These submissions will:

- (a) Provide a brief overview of the proposal at each WWTP;
- (b) Summarise the evidence to be presented in support;
- (c) Establish the legal framework for the assessment;
- (d) Address the issues raised by submitters;
- (e) Identify the changes requested by FNDC to the proposed conditions of consent; and
- (f) Assess the proposals against the relevant tests.

1.8 In my submission, consent should be granted on the conditions proposed by FNDC.

2. BRIEF OVERVIEW OF THE APPLICATIONS

2.1 Both the Opononi and the Kohukohu WWTPs provide important and significant contributions to the social and economic wellbeing of the communities they serve¹⁵ and address health and environmental risks of the on-site systems.¹⁶ There have, however, been performance issues¹⁷ which must now be addressed in a way that is economically and practically feasible.¹⁸

¹¹ Evidence of Melissa Parlane, paras 14 - 15.

¹² Evidence of Becky Macdonald: Opononi, paras 37 – 48 and 52 – 63; Kohukohu, paras 92 – 97 and 108 – 109; Evidence of Martell Letica, paras 10.4 – 10.7.

¹³ Evidence of Martell Letica, para 6.6 and Table 1, para 6.10 and Table 2.

¹⁴ Agenda, page 5.

¹⁵ Evidence of Martell Letica, para 8.2.

¹⁶ Evidence of Martell Letica, para 8.3.

¹⁷ Evidence of Martell Letica, para 6.15 (Opononi) and 6.21 – 6.22 (Kohukohu).

¹⁸ Evidence of Martell Letica, para 10.7.

2.2 The Opononi WWTP will be upgraded to improve nitrification and disinfection. The intention is to deliver the upgrade in two stages:

(a) **Stage 1** involves:

- (i) complete wetland reinstatement;
- (ii) installation of baffle curtains in the ponds;
- (iii) solids removal downstream of the pond; and
- (iv) UV treatment at the final discharge pumpstation

(b) An ammonium removal system will be installed as **Stage 2**.

2.3 The reason for adopting a two-stage approach is two-fold;

(a) As explained by Ms Parlane and Dr McDonald, there are two options (either in-pond or external package plant)¹⁹ and to commit to the option and its design now, prior to addressing operational deficits and without sufficient evidential data, risks over-specification and over-capitalisation²⁰ and fails to allow for technology developments in the interim to be incorporated.²¹

(b) There is currently a funding shortfall of \$1.6M in the budgetary provision²² that will need to be addressed by the Affordable Waters Reform entity²³ in due course in order for Stage 2 to proceed.

2.4 The proposal is to implement Stage 1 within 3 years and to provide a further 3 years for the implementation of Stage 2.²⁴ Finance is available to undertake Stage 1 within this timeframe.²⁵

2.5 The Kohukohu WWTP does not require substantial upgrade. Instead, cost-effective modifications have been identified that will increase retention times and improve the disinfection performance of the plant. Implementation is already underway, with finance approved for the remainder to occur by 1 July 2025.²⁶

19 Evidence of Becky Macdonald, para 47.

20 Evidence of Melissa Parlane, para 37.

21 Evidence of Becky Macdonald, paras 48 and 70.

22 Evidence of Melissa Parlane, para 36.

23 Evidence of Melissa Parlane, para 67.

24 Evidence of Becky Macdonald, para 71.

25 Evidence of Melissa Parlane, para 46.

26 Evidence of Melissa Parlane, para 50.

3. EVIDENCE TO BE PRESENTED

3.1 FNDC has pre-circulated evidence from:

- (a) Melissa Parlane, Asset Manager in the Far North Waters Alliance who outlines the current situation at each of the two wastewater treatment plants, explains the Proposals and confirms the availability of finance for each, addresses certain issues raised by submitters and outlines her concerns with certain proposed conditions of consent;
- (b) Johan Guy and Thomas Gordon, Operators of the two WWTP who respond to various operational matters and concerns expressed by submitters;
- (c) Dr Becky McDonald, independent wastewater engineer, who summarises the key findings of her work since 2020, addresses the submissions relating to the treatment and disposal of wastewater, responds to issues arising from the Council Pre-Hearing Report and outlines changes required to the proposed conditions of consent;
- (d) Dr Brett Beamsley, oceanographer, who explains the hydrodynamic study undertaken to inform the assessment of effects, comments on the effects of climate change and confirms the zone of reasonable mixing for each WWTP;
- (e) Dr Chris Dada, environmental health microbiologist, who explains the health risk assessments undertaken on a cumulative basis adopting a conservative approach and confirms the attributable health risks are below the No Observable Adverse Effects Level (**NOAEL**); and
- (f) Ms Martell Letica, independent planner, who became involved with the applications in July 2022²⁷ and has prepared a comprehensive assessment of the Proposals in accordance with s104, 105 and 107 of the RMA and set out the various requested changes to the proposed conditions of consent.

²⁷ Evidence of Martell Letica, para 4.3.

3.2 The witnesses have comprehensively addressed the issues raised in submissions, addressed the Council Pre-Hearing Report and the proposed conditions to the extent relevant to their areas of expertise.

4. LEGAL FRAMEWORK FOR ASSESSMENT

4.1 The Commissioners will be aware of the relevant statutory framework for assessment, which is described in detail in the Council Pre-Hearing Report and in Ms Letica's planning evidence. I do not intend to set that out here. There are, however, five matters I wish to specifically address.

Activity Status

4.2 Bundling is a method used to ensure that where an application involves a discretionary or non-complying element, if it is appropriate to do so, that activity status also applies to elements that would otherwise be controlled or restricted discretionary.

4.3 Here, it is appropriate to bundle the activities together such that each application is assessed and determined as a discretionary activity. This accords with the approach taken in the Council Pre-Hearing Report²⁸ and Ms Letica's evidence.²⁹

Cumulative effects

4.4 Section 104(1)(a) requires you to have regard to the effects of allowing the activity.

4.5 "Effect" is defined in s3 of the RMA to include cumulative effects which arise over time or in combination with other effects.

4.6 While separate applications have been made for each of the two WWTP the subject of this hearing, and there are another two WWTP that also discharge into the Hokianga Harbour, appropriately, the cumulative effects of the four WWTP have been assessed:

(a) The hydrodynamic modelling study modelled all four WWTP discharges;³⁰

28 Opononi, page 5, Kohukohu, page 62.

29 Evidence of Martell Letica, para 6.4

30 Evidence of Dr Brett Beamsley, paras 8 – 10, 13, 15

(b) Discharges from all four WWTPs were “turned on” in the Quantitative Microbial Risk Assessment (**QMRA**).³¹

4.7 There is no risk that cumulative effects on the Hokianga Harbour have been overlooked.

NZCPS / RPS

4.8 Section 104(1)(b)(iv) requires you to have regard to the relevant provisions of the New Zealand Coastal Policy Statement (**NZCPS**).

4.9 Section 104(1)(b)(v) requires you to have regard to the relevant provisions of the Regional Policy Statement (**RPS**).

4.10 These requirements have not been displaced by the Court of Appeal decision in *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 cited at [106] of the Council Pre-Hearing Report for Opononi and [87] of the Council Pre-Hearing Report for Kohukohu. If that is inferred in [119] and [120] of the Council Pre-Hearing Report for Opononi and [101] and [102] of the Council Pre-Hearing Report for Kohukohu, it is incorrect.

4.11 Ms Letica has identified the relevant provisions of the NZCPS and RPS in her s104 assessment and concluded the proposals are consistent with the provisions of both,³² except for the RPS tangata whenua provisions.³³ In relation to the exception, she notes:

(a) An analysis of the effects of the proposed activities on tangata whenua was commissioned by FNDC for both WWTPs;

(b) Two CIA have been received and submitted to the Regional Council;

(c) Based on the two CIA, the applications are not consistent with the provisions of the RPS or the PRPN-2022.

4.12 This is due to the wording of PRNR-2002 Policy D.1.4:

*Resource consent for an activity may **generally** only be granted if the adverse effects from the activity on the values of the Places of Significance to tangata whenua in the coastal marine area and water bodies are avoided, remedied or mitigated so that they are no more than minor.*

³¹ Evidence of Dr Chris Dada, paras 22, 70(b) and 72.

³² Evidence of Martell Letica, para 9.15 (NZCPS) and 9.21 (RPS).

³³ Evidence of Martell Letica, para 9.21.

4.13 In my submission, the “generally” in D.1.4 allows consent to be granted in this situation.

Reasonable Mixing Zone

4.14 Section 107 is called into play when certain effects arise “after reasonable mixing”.

4.15 A plume may be considered a “conspicuous change in the colour” of the water, which is one of the effects of concern in s107.

4.16 However, as clarified by Ms Letica, neither FNDC nor the Regional Council has any record of an obvious or conspicuous plume in the vicinity of the Opononi outfall on a regular basis. If there is a visible plume, it would be of a temporary nature with at most minor transitory effects on natural character and visual amenity and would not cover an extensive area.³⁴

4.17 As this would only be of concern if existing “after reasonable mixing”, it is important that the zone of reasonable mixing extends beyond the point of discharge:

(a) For Opononi, there is the potential for any plume to be highly changeable due to the 12m depth of the discharge point and the influence of energetic tidal flows.³⁵ This is, however, controlled to some extent by the requirement to discharge on the outgoing tide.³⁶

(b) For Kohukohu, Channel Beacon is the appropriate location.³⁷

Part 2

4.18 The Court of Appeal confirmed in *R J Davidson Family Trust v Marlborough District Council* that recourse may be had to Part 2 when considering a resource consent application, if it would assist to do so.³⁸ This approach has been adopted by the Environment Court in various subsequent decisions on consent applications.³⁹

³⁴ Evidence of Martell Letica, para 8.11(b).

³⁵ Evidence of Dr Brett Beamsley, para 50.

³⁶ Proposed Condition 15.

³⁷ Evidence of Dr Brett Beamsley, para 51.

³⁸ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 at [82].

³⁹ See for example *Bunnings v Queenstown Lakes District Council* [2019] NZEnvC 59 at [15] – [21] and *Ngāti Whātua Ōrākei Whai Maia Ltd v Auckland Council* [2019] NZEnvC 184 at [80].

4.19 In my submission, undertaking a separate and additional Part 2 assessment does not assist in this case. This is consistent with the approach taken in the evidence of Ms Letica.⁴⁰

5. MATTERS RAISED BY SUBMITTERS

5.1 Care has been taken when preparing the pre-circulated evidence to address, to the greatest extent possible, all matters raised by submitters.

5.2 It is not, however, possible to remove the discharges from the Hokianga Harbour as sought by many submitters and in both CIA.⁴¹

5.3 The concept of the mauri of water bodies has been extensively considered by the Environment Court in resource consent applications. The Court has been reluctant to find that an activity adversely affects mauri where there are limited physical environmental effects.⁴² For example, the Environment Court in *Wakatu Inc v Tasman District Council* would not support the finding of effects on mauri where it was not evidenced that physical effects directly diminished the life-supporting capacity or vitality of the affected river.⁴³ For this reason, the FNDC has focused on avoiding, remedying or mitigating the “western science” effects of the discharges.

5.4 The evidence of Ms Parlane confirms that the investigation of land-disposal options is a high priority for FNDC.⁴⁴ However, for these communities, that option has been recently investigated and found to be uneconomical and unfeasible. It is not comparable to the situations at Ahipara, Taipa, Kaikohe and Rawene where further and active investigations are currently underway.⁴⁵ Here, it is clear, that the BPO for each WWTP is to upgrade and improve performance and therefore the quality of the discharge to the coastal marine area.

⁴⁰ Evidence of Martell Letica, para 12.1.

⁴¹ Kohukohu CIA, page 29, para 69; page 31, para 80; page 46, para 129; page 58, para 130

⁴² *Maungaharuru-Tangitu Trust v Hawke's Bay Regional Council* [2016] NZEnvC 232 at [138] – [144]; *Sea-Tow Ltd v Auckland RC* EnvC A066/06 at [367] – [372] and [401] – [405]; *Wakatu Inc v Tasman District Council* [2012] NZEnvC 75 at [22] – [34].

⁴³ *Wakatu Inc v Tasman District Council* [2012] NZEnvC 75 at [64].

⁴⁴ Evidence of Melissa Parlane, para 15.

⁴⁵ Evidence of Melissa Parlane, paras 15 and 16.

6. CONDITIONS

6.1 Proposed conditions were included in the Council Pre-Hearing Report. The pre-circulated evidence of Ms Letica included a tracked changes version of these conditions at Appendix D. Due to some omissions, the requested changes are shown in an updated version of the conditions **attached** to these submissions:

- (a) Deletion of the Community Liaison Group at Opononi and the Kaitaiki Liaison Group at Kohukohu to address the concerns expressed in the evidence of Ms Parlane.⁴⁶ This affects proposed conditions 5 – 8 and 27 for Opononi and 6, 10 – 13 for Kohukohu.⁴⁷ Put simply, there is no point having a liaison group for the sake of having a liaison group; there must be a clear need and purpose for any such group. That does not appear to be the case here.
- (b) Consistent use of the 90th percentile determinant concentration, rather than a maximum or the 95th percentile, with the values set accordingly.⁴⁸ This permits some variability but provides reassurance that poor treatment performance will be captured.⁴⁹ This affects proposed conditions 3, 19, 22 and 23 for Opononi and 21-23 and Schedule 1 for Kohukohu.⁵⁰
- (c) Specific to Opononi:
 - (i) Location: Updating to correctly reference the current legal description and remove the definition of serviced area.⁵¹
 - (ii) Condition 4: Requiring a reasonable stock-proof fence to be maintained.⁵²
 - (iii) Condition 11: Controlling the maximum discharge volume with a rolling 30-day average dry weather flow

⁴⁶ Melissa Parlane, para 64 – 66, 68 and 71.

⁴⁷ Evidence of Martell Letica, para 14.3.

⁴⁸ Evidence of Becky Macdonald, paras 72, 75, 91, 96, 103 and 113.

⁴⁹ Evidence of Becky Macdonald, para 103.

⁵⁰ Evidence of Martell Letica, para 14.3.

⁵¹ Evidence of Martell Letica, paras 6.11 and 14.3; Evidence of Melissa Parlane, para 63.

⁵² Evidence of Martell Letica, Appendix D.

(ADWF) rather than a daily maximum to reflect the expected volume.⁵³

- (iv) Condition 16: Deleting the condition to reflect the tidal clock in use is not one to be “calibrated”.⁵⁴
 - (v) Condition 17: Allowing 6 years for the completion of Stage 2.⁵⁵
 - (vi) Condition 17(c): Enabling the selection of the most appropriate ammonia reduction technology to be carried out at a later date.⁵⁶
 - (vii) New Condition 26(c): Requiring the continued presence of the marker buoy.⁵⁷
 - (viii) Expiry Date: Amending to reflect the recommended 20-year consent duration in the Council Pre-Hearing Report.⁵⁸
 - (ix) Schedule 1, Standard 3: Retaining the requirement to take monitoring samples regardless of results from first two-years.⁵⁹
- (d) Specific to Kohukohu:
- (i) Location: Updating and amending for consistency.⁶⁰
 - (ii) Condition 4(b): Correcting the pond reference and deleting the example technology to address low dissolved oxygen as there are many causes of the low DO in facultative ponds and technologies to address the cause.⁶¹

53 Evidence of Becky Macdonald, paras 28 and 69.

54 Evidence of Martell Letica, para 14.3.

55 Consistent with the evidence referred to in paragraphs 2.3 and 2.4 above.

56 Evidence of Becky Macdonald, paras 70 and 74.

57 Evidence of Martell Letica, para 14.3.

58 Council Pre-Hearing Report, para 158.

59 Evidence of Martell Letica, para 14.3.

60 Evidence of Martell Letica, para 14.3.

61 Evidence of Becky Macdonald, para 112.

- (iii) Condition 8(a)(i): Updating to reflect details able to be stored and made available online without breaching privacy.⁶²
- (iv) Condition 8(a)(iv): Deleting to protect individuals' privacy.⁶³
- (v) Condition 18: Deleting reference to the site not within the consent holder's control.⁶⁴
- (vi) Expiry Date: Amending to reflect the recommended 15-year consent duration in the Council Pre-Hearing Report.⁶⁵
- (vii) Schedules 1 and 2: Deleting the requirement to reset the appropriate sampling point and depth every five years⁶⁶ and correcting proofing errors.

6.2 Importantly, FNDC is not seeking to amend the proposed term of consent. FNDC has accepted the reporting officer's recommendation in that regard.⁶⁷

6.3 Subject to these changes being made, FNDC considers the conditions meet the requirements of s 108 and agrees to the imposition of such on any consent granted.

7. CONCLUSION

7.1 While the discharge of treated human wastewater into the Hokianga Harbour is abhorrent in te ao maori, the Kohukohu CIA acknowledges that cutting off the existing service to that community "is not a desired outcome and would have negative social, cultural and health related effects to all of those who live, work and recreate within and along the Hokianga Harbour."⁶⁸

62 Evidence of Martell Letica, para 14.3.

63 Evidence of Martell Letica, para 14.3.

64 Evidence of Martell Letica, para 14.3.

65 Council Pre-Hearing Report, para 139.

66 Evidence of Martell Letica, para 14.3.

67 Evidence of Melissa Parlane, para 69, and Martell Letica, Appendix C (D.2.14)

68 Kohukohu CIA, page 138, para 164.

7.2 These applications nevertheless are worthy of a grant of consent. The effects from a western science perspective are no more than minor and it is simply uneconomical and unfeasible in these small communities to cease discharging to the coastal marine area at this point in time.

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B S Carruthers KC
Counsel for Far North District Council