

**BEFORE NORTHLAND REGIONAL COUNCIL**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of applications by the Far North District Council for resource consents associated with the operation of the wastewater treatment plants at Opononi-Omapere and Kohukohu.

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**REPLY EVIDENCE OF MARTELL LETICA ON BEHALF OF THE FAR NORTH DISTRICT  
COUNCIL**

**DATED 27 OCTOBER 2023**

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## GLOSSARY OF TERMS AND ABBREVIATIONS

<b>Term</b>	<b>Abbreviation</b>
Far North District Council	FNDC
Far North Waters Alliance	FNWA
Kohukohu Wastewater Treatment Plant	KOH-WWTP
National Policy Statement for Freshwater 2020 (amended February 2023)	NPSFM
Northland Regional Council	NRC
Opononi Wastewater Treatment Plant Assessments of Effects	OPO-AEE
Opononi Wastewater Treatment Plant	OPO-WWTP
Proposed Regional Plan for Northland (October 2023)	PRPN
Quantitative Microbial Risk Assessment	QMRA
Resource Management Act 1991	RMA
Water Quality Standard	WQS
Wastewater Treatment Plants	WWTPs

## **1. INTRODUCTION**

- 1.1. This reply evidence is primarily structured to address matters raised in the Commissioners Minute No. 3 dated 3 October 2023 under the following headings;
  - a. Update on compliance monitoring of the Opononi-Omapere (OPO-WWTP) and Kohukohu (KOH-WWTP) Wastewater Treatment Plants (WWTPs);
  - b. Summary of works undertaken at the WWTP's;
  - c. Commenting on the Northland Regional Council (NRC) Reporting Officer's addendum to their Section 42A recommending report;
  - d. Commenting on the feedback received from submitters during the adjournment of the hearing;
  - e. Consent conditions;
  - f. Other Matters
  - g. Conclusion.
- 1.2. In responding under these headings, some of the information presented is not my own and may not be within my realm of expertise; I reference this where necessary.
- 1.3. A final set of proposed conditions is submitted with this reply (Annexure A).

## **2. UPDATE ON WWTP COMPLIANCE MONITORING**

- 2.1. Resource consent monitoring at all WWTPs is carried out by Far North Waters Alliance (FNWA) Operators; there is a mixture of both manual and automated data collection.
- 2.2. Once collected, data is compiled by the FNWA Compliance Advisor, Ms. Louise Wilson, and submitted to NRC in accordance with reporting requirements.
- 2.3. Ms. Wilson has provided me with a range of monitoring data from both WWTPs. However, this data requires analysis to determine compliance due to the frequency

within which sampling is required to be conducted and how the compliance limit is measured (i.e., rolling median, annual 90<sup>th</sup> percentile calculation).

- 2.4. Ms. Wilson also provided me with a Water and Wastewater RMA Compliance Report dated September 2023 which in summary comments that there is no rainfall meter at KOH-WWTP and that the E.coli limit is being breached.
- 2.5. Further information on monitoring and overall consent compliance can be provided. It would be helpful if the Commissioners could specify what format would be best to provide this data in.

### **3. SUMMARY OF WORKS UNDERTAKEN AT THE WWTPS**

- 3.1. Treatment Process Manager for FNWA, Mr Johan Guy, advises that;
  - a. Normal operations have taken place at both WWTP's; Annexure B contains a summary of the activities involved in normal operations;
  - b. New inflow and outflow meters were installed at the KOH-WWTP in late August 2023;
  - c. Maintenance cleaning of the constructed wetland complex at OPO-WWTP has been carried out by Waterway Specialists 2022 Ltd in June and the end of August and into early September 2023.
  - d. A sludge survey was carried out by Conhur on 12 October 2023 and Far North Waters Alliance staff are collaborating with Conhur on their findings and recommendations;
  - e. Jacobs Ltd were engaged in early October 2023 to undertake detailed design of a chemically assisted solids removal system and UV disinfection.

### **4. ADDENDUM TO SECTION 42A REPORT**

- 4.1. I generally agree with the further analysis provided in the NRC Officer's addendum report and have adopted changes to conditions relating to stock-proof fencing and a tidal clock, and other administrative changes made by the NRC Officer.
- 4.2. I do take exception to their assessment of Policy D.4.1 of the Proposed Regional Plan for Northland (PRPN) however.

- 4.3. Regarding Policy D.4.1 of the PRPN, the addendum report analysis refers to issues of non-compliance with consent condition limits. However, Policy D.4.1 of the PRPN is focused on receiving water quality standards and compliance with the Water Quality Standards (WQS) contained in Appendix H.3 PRPN (Water quality standards and guidelines).
- 4.4. Policy D.4.1 PRPN has a starting point that receiving fresh and/or coastal water is at least maintained where a WQS in H.3 is met. Where a WQS in H.3 is currently being exceeded, then the decision on a resource consent application must ensure that a replacement resource consent contains consent conditions that require the quality of the discharge to be improved over the term of the consent and that the conditions are timebound.
- 4.5. The Quantitative Microbial Risk Assessments (QMRA) of the OPO-WWTP and KOH-WWTP contain analyses of available microbial data from NRC monitoring of the waters of the Hokianga Harbour ( (Dada, 2020, pp. 26-29) (Dada, 2020, pp. 15-23). Additionally, the AEE prepared for the OPO-WWTP contains analysis of the results of recreational bathing water quality monitoring that Dr Dada references in his QMRA ( (Far North District Council, 2019, pp. 37-39) as well as an analysis of bacterial monitoring of the upstream and downstream waters of the Waiarohia Stream (Far North District Council, 2019, pp. 43-45).
- 4.6. In addition to the quantitative monitoring data available, submitters spoke of their many experiences and interactions with their Harbour stating significant adverse experiences of obnoxious and offensive odour from the waters, visual discolouration of the water, shellfish beds being smothered in mud, and changes in the abundance and presence of kai moana to name a few.
- 4.7. Similar to my primary statement of evidence, I consider that it is not possible to make definitive determination that a relevant WQS in Appendix H.3 of the PRPN is being met for the waters of either the Hokianga Harbour or the Waiarohia Stream. Certainly, the assessments made by Dr. Dada and Dr. Becky Macdonald provide basis to assume that there is minimal risk of a WQS being exceeded, but equally I do not believe that assumption is valid without hard data within the evidential threshold that Policy D.4.1 PRPN seems to require.
- 4.8. As such, improving the quality of the discharge and how this takes place within timebound steps is a necessary requirement for both applications under Policy

D.4.1 PRPN for the reasons as stated above, not because of past non-compliance. I consider that the final proposed consent conditions are consistent with this requirement.

- 4.9. For clarity, consideration of past compliance with conditions of a previous consent is to be given regard to under Policy D.2.14(5) of the PRPN in determining an appropriate expiry date for a resource consent and I consider that the reduction in consent durations to 3-years as proposed is consistent with the direction of Policy D.2.14(4) PRPN.

## **5. SUBMITTER FEEDBACK**

- 5.1. Individual and grouped feedback was received from submitters during the adjournment. I have chosen to group feedback into what I consider to be themes in order to clarify how those themes have been advanced through proposed conditions or how some themes cannot be advanced.

### Discharge Quantity

- 5.2. Feedback has included commentary that there is an increase in the discharge quantity.
- 5.3. There is no increase in the quantity of the discharge for KOH-WWTP.
- 5.4. Regarding OPO-WWTP, the discharge volume entered in as part of my primary evidence and the primary evidence of Dr. Macdonald would have resulted in an increase in the discharge volume being available over a 24-hour period. I was not aware that this was an available outcome of that change at that time.
- 5.5. After discussions with the NRC<sup>1</sup>, and further review of the OPO-AEE (Far North District Council, 2019), I agree with the NRC Officer that the maximum discharge volume for OPO-WWTP needs to be amended back to the 450 cubic metres per day (m<sup>3</sup>/day). I give effect to this change in the proposed conditions (Annexure A).

### Discharge Quality

#### *Compliance Limits*

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<sup>1</sup> 14 September 2023 on Teams.

- 5.6. Submitter feedback has rightly pointed out that the discharge quality limits for OPO-WWTP will be an increase on what the consented limits are currently. However, as indicated in my primary evidence and in Dr. Macdonald's primary evidence, the reality is that the OPO-WWTP has not and will not achieve the current consent limits without installing a solids removal system and disinfection, or other comparable form of treatment. My interpretation of some of the feedback is that there is an acknowledgement that this is the reality but also that it should not define the future and should compel the FNDC to urgently improve the situation.
- 5.7. Te Mauri o Te Wai have commented that the use of the 90<sup>th</sup> percentile is inappropriate and that the compliance measure should instead be the 95<sup>th</sup> percentile as this is a far more precautionary measure.
- 5.8. Increasing the discharge quality limits would be contrary to the National Policy Statement for Freshwater Management 2020 (amended February 2023) (NPSFM) and PRPN if a WQS is being exceeded in the receiving waters.
- 5.9. As I establish above at Paragraph 4.7 it is quantitatively unclear whether this is the case for the receiving waters affected by the proposed discharges. Therefore, up and until exceedance of a PRPN WQS has been established, I consider that other mitigating factors to allow the discharges are available and include that treatment plant processes to remove solids and disinfect the wastewater are proceeding with urgency to avoid the discharge from occurring at these higher levels for a long period of time.

*90<sup>th</sup> percentile vs 95<sup>th</sup> percentile*

- 5.10. Te Mauri o Te Wai have commented that the determination of compliance with discharge quality limits should be against the 95<sup>th</sup> percentile rather than the 90<sup>th</sup> percentile as this is a much more precautionary approach.
- 5.11. As per my response above at Paragraph 4.7, I have not viewed any evidence that there is an Appendix H.3 WQS exceedance of receiving waters that would obligate the discharge limit to move to a 95<sup>th</sup> percentile. On the other hand, there is no clear quantitative evidence available to say that there is not a WQS exceedance either and so a reasonable measure of protection is necessary.

- 5.12. I am not a statistician but based on my experience with consent condition drafting and preparing applications for wastewater discharges, the 90<sup>th</sup> percentile is an industry accepted measure because it generally achieves the objective of excluding true non-compliances while also ensuring that receiving environment qualities are maintained. In saying this, I am also aware that it is standard practise to use a 95<sup>th</sup> percentile as a measure of compliance for some parameters where it was likely that there'd be an observable risk to the environment or human health and so more stringent limits are needed.
- 5.13. In concluding, I am of the opinion that in the absence of any other quantitative evidence of risk to Appendix H.3 PRPN WQS, the use of the 90<sup>th</sup> percentile as the measure for compliance with the discharge limits is appropriate. However, if there is evidence that there is a quality or attribute of the receiving environment that the 90<sup>th</sup> percentile would not maintain or protect, then I would expect that NRC would initiate a Section 128 RMA review of the conditions of the consent to deal with an actual or potential adverse effect arising as a result of the exercise of the consents at that time.
- 5.14. I provide further commentary on the compliance measure at Paragraphs 6.2 to 6.4 below also.

#### Additional Monitoring

- 5.15. Feedback has included general statements that additional monitoring of the Hokianga be imposed and that testing sites be reviewed or monitored by the CLG. Other feedback sought that new monitoring sites be used within the Waiarohia Stream and close to the pipe outfall within the harbour.
- 5.16. Without any further information regarding the actual or potential effect and the monitoring response, the technical evidence presented indicates that the monitoring regimes proposed are suitable for the activity and receiving environment.

#### Alternative Treatment Options

- 5.17. A number of the submitters who gave feedback recommended that evaluation and implementation of electrocoagulation be a key tenet of any treatment system while others sought to remove conditions stating that solids removal and UV at OPO-



WWTP be implemented to allow other acceptable alternatives to be determined through the CLG.

- 5.18. I have confirmed with the FNWA Assets and Planning Manager, Ms. Mary Moore, that the treatment plant upgrades as described in the proposed consent conditions have already proceeded to detailed design for OPO-WWTP.
- 5.19. It is my interpretation of the submitter feedback that there is an acceptance and expectation that the treatment capability at the OPO-WWTP needs to be improved in a timely manner and I agree with this conclusion. What I don't agree on is that the upgrade necessary to achieve this should wait for alternatives to be explored and rather I believe that the current workplan is demonstrably the only time-bound viable option presented so far. It will take time for the CLG to form and for the ToR to be adopted to be able to workshop alternatives and make recommendations on these and this is why I do not agree that the upgrades as proposed should be removed from the proposed conditions. Instead, I consider that the upgrades proposed as conditions of consent are a minimum requirement and that the CLG conditions provide an additional forum to collaboratively discuss and identify opportunities to improve the quality of the wastewater discharge.
- 5.20. With regard to the feedback specifying that electrocoagulation should be the only technology to be used at the WWTP's, I have to disagree with this.
- 5.21. I have been advised by those involved with the Rāwene and Taipa working groups that work to implement electrocoagulation at these WWTPs is going well and achieving the project milestones (K. Hoskin, personal conversation, 26 October 2023). However, I understand that, once commissioned, these facilities will go through a period of baseline monitoring to establish the parameters for its design-basis (i.e., what treatment can be expected under certain circumstances). In my opinion, it would not be prudent of FNDC to specify this one form of technology and therefore disregard all other technologies and practices without having confirmed some semblance of design performance at these other sites; this goes against the fundamental principles of BPO optioneering given the wellbeing's it must consider, and often weigh up, when deciding on what the preferred option is. In concluding, the technology has a place in the inventory that would go into BPO optioneering but not be the only technology.

Community Liaison Group

5.22. Submitter feedback to the re-insertion of conditions of consent requiring the formation of a Community Liaison Group (CLG) was positive. However, the feedback indicated that the nature, formality, procedures, and mechanism of its continuance needed to be developed and led in a different manner. I assess these proposed changes in the following paragraphs.

*Led by mana whenua and supported by Iwi, hapū, and community*

5.23. Submitter feedback included recommendations that the CLG be led by mana whenua and supported by Iwi and hapū and community. Some submitter feedback referred to the Taipa and Rāwene resource consents as containing precedent for this construct.

5.24. The final conditions of consent are prepared in recognition that a resource consent allows the “Consent Holder” to do the activity as described subject to the conditions imposed and is enforced by the “Consent Authority”. This is in recognition that a resource consent cannot require an action of a third-party and that the provisions of the RMA must be available to both the Consent Holder and Consent Authority for any condition during the term of the consent (i.e., change or cancellation of condition, review, or enforcement). In this regard, it can seem that there is an inability for other groups to be able to hold a position of influence over a process involving them.

5.25. Despite the consent conditions being prepared in this manner, I consider they do not limit any opportunity to identify and give effect to this request through the establishment and operation of the CLG and would need to be specified in the Terms of Reference (ToR) developed in collaboration between the FNDC as Consent Holder, mana whenua, and the wider communities.

5.26. I attach copies of the current resource consents for the Taipa (AUT.004007.01-03) and Rāwene (AUT.002577.01-04) WWTPs at Annexure C. My reading of these resource consents is that the CLG-type conditions of those resource consents provide examples of how consent conditions can be worded in the manner proposed for OPO and KOH WWTPs whilst still enabling authority over a particular process by others as has been the practise in those CLG that are now operational.

5.27. I have made minor amendments to proposed consent conditions to better reflect these concessions.

*CLG to direct how it will operate and function, and its membership*

- 5.28. Despite some submitters putting forward detailed suggestions of milestone planning, I have been mindful that feedback also asks FNDC to leave much of the choices on operating the CLGs, and their influence over the WWTP's, to the CLGs.
- 5.29. I believe that the operation and functioning of the CLG will primarily be a product of the ToR and that the ToR needs to be developed and adopted as a collaboration of the CLG. For this reason, I have not promoted a ToR nor have I promoted 'milestones' as conditions of consent. I have however proposed that the "discharge to land" options report be completed and submitted to the NRC within 1-year of commencement of the consents. I expect that this overall timeframe will compel all parties to collaborate effectively and efficiently, including the setting of milestones, as a means of achieving that deliverable date. I have used the Taipa resource consent as the basis for the timeline proposed.
- 5.30. I have included a condition of consent that the development, adoption, and maintenance of an appropriate ToR is a purpose (or function) for the CLG to consolidate the role and evolution that this document may have over the duration of the consents.
- 5.31. Despite there being challenges in maintaining a CLG for OPO-WWTP previously, and the significantly reduced consent term, the proposed consent conditions continue to require that meetings of the CLG are held annually at minimum and that a different schedule can be imposed once it is adopted and formalised within the ToR. This provides at least a baseline of expectation for those parties entering into the ToR without actually parameterising aspects of the CLG and how it functions at this stage. In my opinion, how the CLG functions is up to the members of the CLG but that consent conditions need to provide a bottom-line.
- 5.32. Submitter feedback seeks that the membership of the CLG's be determined by "locals", "marae", "mana whenua", and/or "hapū". I found it difficult to resolve who the FNDC would need to invite to be members of the CLG's with the use of these varying terms, all of which could mean one and the same thing, only the submitters will ever know this. Therefore, while I have taken into account all of the feedback on this matter, I have chosen to rely on the feedback from Dallas King on behalf of Te Māhurehure, Ngāti Kaharau, Ngāti Hau, Te Hikutū Hokianga, dated 29 September 2023 with subject line *Response to FNDC Proposed Consent*

*Conditions – Kohukohu & Opononi WWTP.* Accordingly, I have amended the proposed consent conditions to give effect to the recommendations that,

*...the ‘required representation’ on those groups, having spoken to the hapū of those areas we support the following:*

*Opononi/Ōmapere:*

- *Ngāti Korokoro Hapū (supported by ngā hapū o Hokianga & Iwi - Ngāpuhi & Te Rarawa); and*
- *Opononi/Ōmapere Community*

*Kohukohu:*

- *Te Ihutai Hapū (supported by ngā hapū o Hokianga & Iwi - Ngāpuhi & Te Rarawa); and*
- *Kohukohu Community.*

5.33. I have made changes to the proposed consent conditions inline with my analysis above.

*Discharge to Land vs Best Practicable Option*

5.34. Submitter feedback sought that the purpose of the CLG be squarely for investigating and moving to a discharge to land option rather than relying on the term “Best Practicable Option” (BPO) to achieve this direction.

5.35. I do accept the sentiments from the feedback that having BPO as a stand-alone assessment matter can result in the focus of the work being on treatment alone rather than treatment options for the benefit of moving to discharge to land.

5.36. While treatment amendments can improve the discharge quality immensely, it would still not be a remedy for the significant effect on the spiritual and cultural values of the wai.

5.37. Therefore, in response to submitter feedback and to appropriately recognise and provide for the NPSFM edict of *Te Mana o Te Wai*, I have considered that the use of BPO terminology is still valid but also that this should be paired with a clear directive that the BPO assessment is solely for the options of discharging to land so that this is the focus.

5.38. I give effect to this in the proposed consent conditions.

### *Conclusions on CLGs*

- 5.39. Amendments proposed in the final set of consent conditions now confirm the importance and primacy that a ToR has in the administration and operation of the CLG's. This approach recognises the need for adaptation and will support the dynamism demanded by the submitters that the traditional "Consent Holder/Consent Authority" relationship does not offer, while still having conditions which are enforceable by the Consent Authority.

### Mātauranga Māori Monitoring

- 5.40. A majority of the submitter feedback has requested the inclusion of monitoring from a Mātauranga Māori perspective.
- 5.41. Mātauranga Māori as defined in the PRPN is, *'the knowledge, comprehension or understanding of everything visible or invisible that exists across the universe'*. Tangata whenua have described it in their own words through both written submissions and kōrero as given to the Commissioners during the course of the hearing.
- 5.42. In considering the planning context regarding Mātauranga, Clause 3.2(d) of the NPSFM requires that in giving effect to Te Mana o Te Wai, regional council must enable the application of a diversity of systems of values and knowledge, such as Mātauranga Māori, to the management of freshwater. The PRPN then attempts to achieve this enablement by requiring that an appropriate analysis of effects on tangata whenua and their taonga be required (Policy D.1.2 PRPN) in an application for resource consent where the effects would be adverse (Policy D.1.1 PRPN). The analysis is to incorporate, where appropriate, Mātauranga Māori.
- 5.43. Overall, I consider that Mātauranga Māori monitoring will need to be developed and adopted through the CLG at this stage of the process. This is not, in my experience, the best place for such an important aspect of resource management to reside. Nonetheless I consider it is a forum that will be capable of resourcing Mātauranga expertise to deliver the desired outcome of a monitoring plan and implementation of it. I consider that development of any Mātauranga must sit with the CLG forum as unless the decision of these applications by the Commissioners is delayed, I don't believe that it is appropriate for FNDC to propose such a monitoring framework. This is because I consider that Mātauranga is local

knowledge, practice, connection, and kaitiakitanga and neither I nor anyone else from FNDC has that expertise.

## **6. CONSENT CONDITIONS**

- 6.1. The following items provide the basis for changes to the proposed consent conditions which have not been addressed in the sections above.

### Discharge Limit Look-up Tables

- 6.2. I have added 'Look-up' tables in Schedule 1 of the proposed consent conditions. To explain why I have done this, I defer to the work by Jacobs (2020, pg.21) which assessed the compliance criteria of the current consent and compared it to the methods recommended by the New Zealand Municipal Wastewater Monitoring Guidelines.

- 6.3. I understand from that work that a "Look-up" table is a transparent means of showing the number of exceedances allowed based on the number of samples upfront. The allowable exceedances are based on a rounding of percentage such that the 50<sup>th</sup> and 90<sup>th</sup> percentiles of 12 samples is 6 and 1.2 respectively. This contrasts with exceedances being determined retrospectively through excel calculations carried out after sampling which is what occurs under the current regime.

- 6.4. Additionally, I have amended the current wording which uses a rolling compliance period (i.e., the most recent 12 samples) to use a calendar compliance period which according to Jacobs (2020, pg.21), "*avoids multiple non-compliances due to the same sample*".

- 6.5. And lastly, I have changed the term "median" to 50<sup>th</sup> percentile for both sets of conditions as the 50<sup>th</sup> percentile is the median of the sample values with half of the values less than the median and half of the values greater than the median (Larson, 2006). This change is to mostly to provide a cohesive set of compliance measures.

### Reporting

- 6.6. Reporting is a fundamental mechanism for a Consent Authority to know whether the exercise of the consent is compliant with its conditions or not. The frequency

within which reporting is required determines how closely the Consent Authority can make those subsequent compliance decisions.

6.7. I have amended the proposed consent conditions to set out specific reporting requirements in Schedule 1. I have reviewed other more recent consent decisions (i.e., AUT.004111 (Kerikeri Wastewater Treatment Plant)) for wastewater discharges that have reporting conditions in them and have utilised similar wording and reporting timeframes as those. While there are reporting requirements within some of the initial<sup>2</sup> consent conditions, I consider that it is much clearer to have a dedicated space for reporting and what exactly is required in that reporting. Additionally, consolidating the reporting requirements makes it clear that information reported on is for the same period and is submitted on the same day.

6.8. Consistent reporting parameters and timeframes can;

- a. be administratively more efficient for FNWA staff given that the reporting can be coordinated across the WWTPs in the District.
- b. Provide data that is comparable both for the individual WWTP and across the WWTPs in the District that have similar reporting requirements.
- c. Allow broader audiences, like the CLGs, to read and assess compliance and performance of the WWTP.

6.9. Because I have included a dedicated section to reporting on a monthly basis, and that the compliance measure is now subject to transparent exceedance allowances, I don't believe that there is any need for notification of the NRC of any non-compliances as was set out in Section 5 of Schedule 1. Any non-compliances will be evident and assessed in the monthly reporting.

#### Notification of BPO

6.10. I have deleted the consent condition requiring that NRC be notified of the BPO. Instead, I have added an advice note that states that s the discharge to water consents will be surrendered upon the lawful commissioning of infrastructure to discharge to land. I consider this to be a more robust mechanism for removing

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<sup>2</sup> S. 42A and FNDC revised consent conditions.

the continued capability to discharge to water where there is authorisation<sup>3</sup> and capability to discharge to land.

#### Harbour Water Monitoring

- 6.11. I have retained the receiving water monitoring conditions<sup>4</sup> on the KOH-WWTP proposed consent conditions. These conditions are a replication of conditions which are contained in the current resource consent.
- 6.12. Despite the conditions being imposed on the current resource consent, I have been advised by the FNWA Compliance Advisor (personal communication, 26 October 2023) that this monitoring has never taken place and that NRC has not enforced the consent condition because there was a view that it would have limited value in monitoring the effect of the discharge on the harbour waters due to multiple sources of contamination.
- 6.13. As the NRC Officer did not dispel the use of these consent conditions in her evidence, and that there is no clear evidence that there are not WQS exceedances, I conclude that the consent conditions must remain.
- 6.14. Te Ihutai in its analysis of effects requests the implementation of faecal source tracking. I consider this to be a useful tool for understanding the source of faecals in the harbour water but not one which should fall to FNDC to undertake as part of their resource consents as none of the experts nor the NRC's Officer have identified that the e.coli and/or faecal coliform Appendix H.3 WQS are exceeded. Should a monitoring system be implemented to enable determination of performance against Appendix H.3 WQSs be implemented and it is found that there are exceedances, then the NRC has the ability to review the conditions of consent to ensure that standards are not exceeded.

## **7. OTHER MATTERS**

- 7.1. Te Ihutai made a number of recommendations in its analysis of effects (Sanson & Associates Limited, 2023) as did Te Haara (2020) on behalf of those consulted by them.

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<sup>3</sup> All necessary authorisations are in place, including resource consents and easements.

<sup>4</sup> Condition 26 and Section 2 of Schedule 1 of KOH-WWTP proposed conditions.



7.2. I appreciate the concept of both proposals to offset adverse effects (i.e., riparian planting or development of an offset strategy). However, key decisions (including limits and parameters of the offset) would need to be specified as conditions of consent with the strategy or management plan being prepared thereafter to document how the parameters of the offset will be achieved. I understand that to relegate key decisions and limits to future documents goes against the principles set out in *Turner v Allison* [1971] NZLR 833.

7.3. The evidence of the experts engaged by FNDC is that there is no significant adverse effect on the environment with the exception of the effects to tangata whenua and their taonga and the mauri of the Hokianga. As such, the specific offset measures would need to be developed and negotiated with tangata whenua before being imposed as conditions of consent. This matter of environmental offset can be adopted in the CLG ToRs as a point of discussion within that forum. If conditions of consent relating to offset or compensation can be arrived at, then a variation to the consent can be initiated by FNDC to incorporate them at a later date. However, at this point in time, I consider it to be inappropriate to incorporate this as a condition of consent without the parameters and targets of the offset or the compensation being prescribed in a condition of consent.

## 8. CONCLUSION

8.1. Having considered the feedback from submitters, I have revised proposed consent conditions to the extent that I consider the changes are available under Section 108 and Section 108AA RMA.

8.2. Additionally, I have revised proposed consent conditions to bring some conditions into line with best practise and to ensure more specificity on key elements such as reporting.

**DATED** this 27<sup>th</sup> day of October 2023



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**Martell Letica**  
Planner for the Applicant

## REFERENCES

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