

# **Development Agreement**

**under the Local Government Act 2002**

---

Far North District Council

Carrington Estate Jade LP

## **Development Agreement**

Date: 2022

### **PARTIES**

Far North District Council ("Council")

Carrington Estate Jade LP ("Carrington")

### **BACKGROUND**

- A Council operates the wastewater treatment plant (WWTP) at Whatuwhihi and is responsible for the collection and disposal of wastewater arising within that plant.
- B Council is also the regulatory authority, and this includes ensuring that all properties in the district are able to dispose of their wastewater in accordance with the relevant consents.
- C On 30 August 2021, Carrington lodged the Subdivision Consent Application with Council, seeking to create 140 residential lots in Whatuwhihi, Northland. Council has declined to accept that application because the WWTP is currently operating at capacity and will require an upgrade to have sufficient capacity to accept the wastewater from the Carrington Land.
- D Carrington has been working with Council to identify the upgrades needed to the WWTP and Wastewater System to accept the wastewater from the subdivision.
- E Council has no current plan or intention to upgrade the WWTP at this time, but has agreed to allow Carrington to carry out the Works at its cost to achieve a total of 437m<sup>3</sup> ADWF (average dry weather flow) subject to the terms of this Agreement.
- F Upon entry into this Agreement and Council's regulators receiving necessary approval from the General Manager IAMS, Council's regulators will accept and process the Subdivision Consent Application as a controlled activity.

### **OPERATIVE PROVISIONS**

#### **1 DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement, unless the context otherwise requires:

- (a) *Access Agreements* means any agreements or consents that are required for access to the Required Land from the land's owners.
- (b) *Additional Capacity* has the meaning set out in clause 11.2.
- (c) *Agreement* means this agreement.
- (d) *Carrington Land* means the land owned by Carrington, or any related company (as defined in the Companies Act 1993) of Carrington, or another entity wholly or partly owned by Carrington.
- (e) *Commencement Date* means the date that Carrington gives notice to Council in satisfaction of clause 2.2.

## Development Agreement

- (f) *Contractors* means the contractor appointed to undertake the WWTP Works and Network Works, respectively, in accordance with clause 6.1 (or such other contractor(s) nominated by Carrington in substitution and approved by Council's Development Engineer (such approval not to be unreasonably withheld or delayed)).
- (g) *Completion* means:
  - (i) Practical Completion of the WWTP Works; and
  - (ii) Practical Completion of the Network Works; and
  - (iii) Carrington has provided as-built asset information and operation and maintenance manuals to the Council.
- (h) *Council* means Far North District Council.
- (i) *Council's Development Engineer* means Kelvin Kapp, Senior Engineer, or any future Council employee who takes this position.
- (j) *Council Land* has the meaning set out in clause 5.1(a).
- (k) *Council's Network* means the Wastewater System that is required to accept and carry wastewater discharges from the Subdivision Land to the WWTP and which is subject to the upgrades as set out in Schedule 1.
- (l) *Designers* means Global Environmental Engineering Limited (with Gilles Allner as the key person) and CCL 2015 Limited (with Phil Cook as the key person) (or such other designers nominated by Carrington in substitution from time to time and approved by Council's Development Engineer (such approval not to be unreasonably withheld or delayed)).
- (m) *Detailed Design* has the meaning set out in clause 6.1(a).
- (n) *Effective Date* means the date of this Agreement.
- (o) *Engineering Standards* has the meaning set out in clause 8.2.
- (p) *General Manager IAMS* means Andy Finch, General Manager – Infrastructure and Asset Management, or any future Council employee who takes this position.
- (q) *HSWA* means the Health and Safety at Work Act 2015.
- (r) *Nominated Contractors* means:
  - (i) in relation to the WWTP Works, Ventia Services Group Limited;
  - (ii) in relation to the Network Works, Ventia Services Group Limited, Far North Roding Limited, Webb Contracting Limited and such other contractors (if any) that the parties agree may be invited to tender for the Network Works.
- (s) *Network Contract* has the meaning set out in clause 9.2(b)(iii).

## Development Agreement

- (t) *Network Works* means the upgrades required to the Council's Network as described in Schedule 1.
- (u) *Personnel* means a party's employees, agents, contractors, consultants, permitted assigns and any other personnel engaged by a party in relation to, and in connection with, the subject matter of this Agreement and in the case of Carrington, the Contractors and Designers.
- (v) *Practical Completion* has the meaning given under the WWTP Contract and Network Contract respectively.
- (w) *Required Consents* means any consents that are required to undertake the Works (excluding the Access Agreements), and includes building consents, resource consents, and engineering approvals.
- (x) *Required Land* means the land that Carrington requires access to undertake the Works, being Council Land and Third Party Land (but excludes Carrington Land).
- (y) *Subdivision Land* means Pt Lot 1 DP 67692 and part of Lot 6 DP 417562, and includes the allotments proposed to be created under the Subdivision Consent Application.
- (z) *Subdivision Consent* means the consent granted as a result of the Subdivision Consent Application.
- (aa) *Subdivision Consent Application* means the application known as RC 2220163, lodged by Carrington on 30 August 2021, seeking to create 140 residential allotments, plus 3 lots as roads to vest and 2 pedestrian walkways.
- (bb) *Third Party Land* has the meaning set out in clause 5.1(b).
- (cc) *Wastewater System* means all infrastructure, including pipes, fittings, manholes, pumps, pump stations, and any land, buildings, and treatment works which are under the control of the Council or any other council or council-controlled organisation, and used for the purpose of providing wastewater acceptance and treatment services to the Far North District.
- (dd) *Works* means the WWTP Works and the Network Works.
- (ee) *WWTP* means the Whatuwhiwhi Wastewater Treatment Plant operated by Far North Waters (an alliance between Council and Ventia Services Group Limited) that is required to accept and treat wastewater discharges from the Subdivision Land and which is subject to the upgrades set out in Schedule 2.
- (ff) *WWTP Contract* has the meaning set out in clause 9.2(a).
- (gg) *WWTP Works* means the upgrades required to the WWTP as described in Schedule 2.

1.2 In this Agreement, unless the context otherwise requires or it is expressly stated otherwise:

- (a) words denoting the singular include the plural, and vice versa;

## **Development Agreement**

- (b) one gender includes the other genders;
- (c) words denoting a person include any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, estate, agency of state, municipal authority, government or any statutory body in each case whether or not having a separate legal identity;
- (d) reference to anything of a particular nature following upon a general statement will not in any way derogate from or limit the application of the general statement, unless the particular context requires such derogation or limitation;
- (e) any reference to month or monthly means respectively, calendar month or calendar monthly;
- (f) references to clauses and Schedules are references to clauses and Schedules in this Agreement;
- (g) the section headings and clause headings will not form part of this Agreement or affect its interpretation in any way;
- (h) any reference to any statute, regulation, ordinance or bylaw will be deemed to extend to all statutes, regulations, ordinances or bylaws amending, consolidating or replacing the same; and
- (i) unless expressly provided otherwise, where any party's consent, confirmation or approval is required pursuant to any provision of this Agreement, such consent, confirmation or approval will not be unreasonably withheld or delayed or given subject to unreasonable conditions.

## **2 CONDITIONS**

- 2.1 Clauses 1, 2, 3, 4, 13, 16, 17, 18, 19, 20, 21, 22 and 23 shall take effect on the Effective Date.
- 2.2 All other clauses are conditional upon Carrington obtaining the Subdivision Consent on terms and conditions acceptable to Carrington and Carrington giving notice to Council that it intends to give effect to the Subdivision Consent.
- 2.3 If the condition set out in clause 2.2 has not been satisfied by 30 September 2022 or such other date as amended by Carrington by giving notice to the Council, then at any time after that date and before satisfaction of the relevant condition, Carrington may terminate this Agreement by notice in writing to Council.

## **3 SUBDIVISION CONSENT**

- 3.1 Following Council's receipt of the Subdivision Consent Application, Council's General Manager IAMS shall promptly advise Council consent regulators that the proposal covered by the Subdivision Consent Application can be connected to the Wastewater System to enable them to process the Subdivision Consent Application as a controlled activity.

#### 4 GENERAL RESPONSIBILITIES

- 4.1 In undertaking their respective obligations under this Agreement, Council and Carrington shall:
- (a) at all times act reasonably and in accordance with the requirements of this Agreement;
  - (b) perform their respective obligations and consider any request for approval or consent under this Agreement (unless expressly stated otherwise) in a reasonable manner, and with all reasonable diligence and speed;
  - (c) consult with the other party as reasonably required to enable performance by each of them of the matters for which they are responsible under this Agreement;
  - (d) keep the other party apprised of progress (current and projected) of matters for which they are responsible;
  - (e) comply with all applicable health and safety laws and regulations (including the HSWA and all associated regulations under the HSWA), and WorkSafe NZ Approved Codes of Practice; and
  - (f) comply with all other relevant laws, regulatory requirements, consents and permits.

#### 5 COUNCIL OBLIGATIONS

- 5.1 Subject to the terms of this Agreement, Council agrees to:
- (a) provide Carrington, and its Personnel, with access to the WWTP and all other Council land as required by Carrington to undertake and complete the Works, including in order to remedy any defects during the Defects Notification Periods (**Council Land**);
  - (b) use its powers under the Local Government Act 2002 to enable Carrington and its Personnel to obtain access to any other land associated with the proposed Works, including in order to remedy any defects during the Defects Notification Periods (**Third Party Land**) as reasonably required by Carrington to carry out and complete the Works on terms and conditions reasonably acceptable to the owner of the Third Party Land and Carrington;
  - (c) subject to all the Works achieving Practical Completion, allow the Subdivision Land to connect to the Council's Network upon the terms and conditions as set out in this Agreement and the Subdivision Consent;
  - (d) accept the Subdivision Land's discharge into the Wastewater System for treatment and disposal at the WWTP, once the Works have reached Practical Completion and the WWTP is operational;
  - (e) review the Detailed Design in accordance with its obligations under clause 8;
  - (f) process all Required Consents for the Works in accordance with its obligations under clause 7;

## **Development Agreement**

- (g) obtain all Access Agreements for the Works in accordance with its obligations under clause 7;
- (h) accept responsibility for the Works from the dates set out in clause 10;
- (i) accept ownership in the WWTP Works and the Network Works upon Completion;
- (j) share any technical information or studies that it holds or obtains which Carrington may reasonably require to undertake the Works; and
- (k) assist Carrington in its performance and completion of the Works to the extent reasonably required and in accordance with its obligations under this Agreement.

## **6 CARRINGTON OBLIGATIONS**

6.1 Subject to the terms of this Agreement, Carrington shall:

- (a) undertake the design of the Works by the Designers at Carrington's cost, to the extent required for obtaining any Required Consents by Council being not less than a total of 437 m<sup>3</sup>/day ADWF (**Detailed Design**);
- (b) submit the Detailed Design to Council for review in accordance with the requirements of clause 8 and incorporate all reasonable comments into the Detailed Design;
- (c) obtain the Required Consents for the Works in accordance with its requirements under clause 7;
- (d) at Carrington's cost, enter into construction contracts with the Contractors to undertake the Works in accordance with clause 9;
- (e) provide Council with evidence of Completion of the Works as required by this Agreement;
- (f) make good any damage to the Third Party Land arising during the course of performing the Works, including any injurious affection; and
- (g) enter into such documents as reasonably required by Council for vesting of ownership of the Works in Council upon Completion.

## **7 ACCESS AGREEMENTS**

- 7.1 Council shall use its powers under the Local Government Act 2002 to enable Carrington to obtain Access Agreements over Third Party Land for the Works promptly following request by Carrington.
- 7.2 Carrington shall be responsible for obtaining all Access Agreements for the Works in the name of Council. Carrington shall be responsible for the cost of obtaining the Access Agreements, with the exception of any internal Council costs incurred by Council through processing the Access Agreements.

## Development Agreement

- 7.3 Council shall sign all documents and do all things reasonably required to assist Carrington in obtaining the Access Agreements, including promptly processing the Access Agreements applications.

## 8 DETAILED DESIGN

- 8.1 Carrington shall submit the Detailed Design to Council's Development Engineer for review prior to Carrington seeking the Required Consents.
- 8.2 Council's Development Engineer will review the Detailed Design and provide written notice to Carrington confirming if it complies with the Works and the Far North District Council Engineering Standards March 2009 or any replacement to those standards (**Engineering Standards**).
- 8.3 Council's Development Engineer may request reasonable changes to the Detailed Design where this is necessary to comply with the Works or the Engineering Standards.
- 8.4 If during the course of the Works, Carrington proposes any material changes to the Detailed Design, Carrington shall seek approval by the Council's Development Engineer to those changes (such approval not to be unreasonably withheld or delayed), prior to instructing any variation to the Works under the WWTP Contract or the Network Contract (as applicable).

## 9 WORKS

- 9.1 Carrington's obligations to tender and undertake the Works under this clause 9 are conditional upon:
- (a) Carrington obtaining the Required Consents on terms and conditions acceptable to Carrington; and
  - (b) Carrington obtaining the Access Agreements on terms and conditions acceptable to Carrington.
- 9.2 Subject to clause 9.1 and the other terms of this Agreement, Carrington shall:
- (a) enter into a construction contract (based on NZS 3910:2013 as amended by special conditions) with the Nominated Contractor for the WWTP Works (**WWTP Contract**); and
  - (b) tender the Network Works under a construction contract (based on NZS 3910:2013 as amended by special conditions) to the Nominated Contractors for the Network Works and:
    - (i) review the tenders submitted by those Nominated Contractors;
    - (ii) notify Council of the selected Contractor; and
    - (iii) enter into a construction contract with the selected Contractor to undertake the Network Works (**Network Contract**).



## **Development Agreement**

- 9.3 Notwithstanding clause 9.2, Carrington shall engage the Nominated Contractors and the Designers to undertake the Works on terms and conditions acceptable to Carrington in its sole discretion.
- 9.4 Carrington shall undertake the Works:
- (a) in accordance with the terms of this Agreement;
  - (b) in accordance with the Required Consents;
  - (c) to the applicable Engineering Standards and building standards; and
  - (d) in accordance with applicable legislation.
- 9.5 Carrington shall keep the Council informed of the progress of the Works on a monthly basis and shall enable Council reasonable opportunity to inspect the Works from time to time upon prior request.
- 9.6 Upon commencement of each of the physical Works, Carrington must procure the relevant Contractor to continue diligently with the undertaking of the relevant Works through to Completion (subject to delays beyond the reasonable control of Carrington).
- 9.7 Carrington acknowledges that the WWTP will need to continue to operate during the WWTP Works and will work with Council to ensure a minimal disruption to that service.
- 9.8 In accessing the Required Land, Carrington must comply with all site security and safety policies notified to Carrington by Council and/or the owner of the Third Party Land from time to time.
- 9.9 Carrington will promptly notify Council when each of the Network Works and WWTP Works have achieved Practical Completion and Completion in accordance with this Agreement.
- 9.10 Following Completion of the Works, Carrington shall provide the following documentation to Council in respect of each of the Network Works and WWTP Works:
- (a) as-built plans of the relevant Works;
  - (b) a 'Producer Statement-Construction' (PS3) for the relevant Works; and
  - (c) a 'Producer Statement Construction Supervision' (PS4) for the relevant Works.

## **10 DAMAGE AND DEFECTS**

- 10.1 Carrington shall be responsible for rectifying damage (including, for example, fire, flood and theft) to the Network Works and WWTP Works, respectively, up to the relevant date of Practical Completion except:
- (a) to the extent that such damage is caused or contributed to by Council Personnel in which case Council shall be responsible for the cost of rectifying such damage to the extent of its contribution (noting that Ventia's staff engaged by Carrington

## **Development Agreement**

to undertake the WWTP Works shall not be deemed to be Council Personnel); and

- (b) in relation to any general fair wear and tear of the Works, Council's Network or WWTP.

10.2 Council shall be responsible for rectifying damage to the Network Works and WWTP Works respectively, following the relevant date of Practical Completion.

10.3 Carrington shall be responsible for remedying defects and any loss or damage arising from those defects in the Network Works and WWTP Works, respectively, resulting from defective workmanship or materials that arise before the end of the relevant Defects Notification Period (as defined in the WWTP Contract and Network Contract respectively) except:

- (a) to the extent that such defects are caused or contributed to by Council Personnel in which case Council shall be responsible for the cost of remedying such defects to the extent of its contribution (noting that Ventia's staff engaged by Carrington to undertake the WWTP Works shall not be deemed to be Council Personnel); and
- (b) in relation to any general fair wear and tear of the Works, Council's Network or WWTP.

10.4 Council shall be responsible for remedying defects to the Network Works and WWTP Works, respectively, following the expiry of the relevant Defects Notification Period (as defined in the WWTP Contract and Network Contract respectively).

## **11 GUARANTEED DISCHARGE**

11.1 Council guarantees that upon Completion, all wastewater discharges from the Subdivision Land shall be able to discharge into the Council's Network and be treated at the WWTP.

11.2 Council acknowledges that the Works also provide additional capacity in Council's Network and the WWTP over and above the capacity required for the wastewater discharges from the Subdivision Land (**Additional Capacity**).

11.3 This Additional Capacity shall be available for any future development on a first come first serve basis.

## **12 COST OF WORKS**

12.1 Following receipt of the cost and/or tenders submitted by the Nominated Contractors for the Works, Carrington shall calculate the estimated cost of the Works.

12.2 Carrington may, in its sole discretion, terminate this Agreement, elect to not proceed with the Works and not give effect to the Subdivision Consent, if it does not accept the cost of the Works before any physical Works have commenced.

12.3 The parties acknowledge and agree that, unless agreed otherwise by Carrington in writing, Carrington shall not be responsible for an increase in the cost of the Works as a result of:

## **Development Agreement**

- (a) changes to the Works required by Council (with the exception of changes required under clause 8.3);
- (b) additional works or upgrades outside of the Works in connection with, or to, the WWTP or Wastewater System required by Council; or
- (c) an act or omission by Council or Council's Personnel (excluding any act or omission by Council when acting in its regulatory capacity).

## **13 FUTURE CONTRIBUTIONS**

- 13.1 Council agrees that it will not impose development contributions or financial contributions for the Carrington Land to connect and discharge wastewater to the Council's Network for treatment at the WWTP for the allotments proposed to be created by the current Subdivision Consent Application.

## **14 HEALTH AND SAFETY**

- 14.1 Without limiting any additional health and safety obligations of Carrington at law, Carrington shall comply, and ensure that the Contractors, Designers and any other Personnel engaged by Carrington in respect of the Works comply, with Council's and Far North Water's health and safety policies and procedures set out in Schedule 3 of this Agreement.

## **15 INSURANCE**

- 15.1 Carrington shall procure that:

- (a) each Contractor effect and maintain public liability insurance for an amount not less than \$10 million, covering claims in respect of loss or damage to property or injury to or death of persons arising from or in connection with the carrying out of any Works by or on behalf of Carrington during the performance of their respective Works under the Network Contract and WWTP Contract (as applicable);
- (b) each Contractor effect and maintain contract works insurance for the value of the Network Works and WWTP Works (as applicable) underway at any given time; and
- (c) the Designers each hold and maintain (for at least 6 years following Practical Completion of the relevant Works to that Designer) professional indemnity insurance for an amount no less than \$1 million.

## **16 LIMITATION OF LIABILITY**

- 16.1 Subject to clauses 16.2 and 16.3, Carrington's liability to Council arising out of or in connection with this Agreement and the Works (including design of the Works), is limited to:
- (a) reasonably foreseeable claims, demands, actions, proceedings, costs, losses, expenses and damages;
  - (b) reasonable and actual costs caused directly by an act, omission or breach of this Agreement by Carrington or Carrington Personnel; and

## Development Agreement

- (c) the following maximum amounts and for the following periods:
  - (i) for legal liability for claims in respect of loss of or damage to property or injury to or death of persons arising from or in connection with the carrying out of the Works (including Council Land and Third Party Land):
    - (A) \$10 million for the Network Works up until Practical Completion of the Network Works following which Carrington shall be released from all liability to the Council in respect of such claims; and
    - (B) \$10 million for the WWTP Works up until Practical Completion of the WWTP Works following which Carrington shall be released from all liability to the Council in respect of such claims;
  - (ii) for legal liability for claims in respect of loss or damage caused by Carrington or the Designers in connection with design of the Works (including the Detailed Design):
    - (A) \$1 million for the Network Works up until 6 years following Practical Completion of the Network Works following which Carrington shall be released from all liability to the Council in respect of such claims; and
    - (B) \$1 million for the WWTP Works up until 6 years following Practical Completion of the WWTP Works following which Carrington shall be released from all liability to the Council in respect of such claims; and
  - (iii) for any claims in respect of Carrington's breach, default or other liability under, or in connection with, this Agreement 150% of the cost of the Works.

16.2 Carrington shall not be liable to Council for any claims under or in connection with this Agreement for any consequential or special loss, loss of profit (or anticipated profit), loss of revenue (or anticipated revenue), loss of production, loss of or damage to reputation, loss of use or the cost of capital or other financing costs, however arising, whether under contract, in tort or otherwise.

16.3 If:

- (a) a party (**Party A**) is found liable (whether in contract, tort, under statute or otherwise) to the other party (**Party B**) under this Agreement for any cost, loss, expense or damage; and
- (b) Party B and/or Party B's Personnel has caused or contributed to the relevant cost, loss, expense or damage,

then the cost, loss, expense or damage (as applicable) recoverable from Party A shall be reduced proportionately to the extent of Party B and/or Party B's Personnel cause or contribution.

**17 DURATION OF CARRINGTON'S OBLIGATIONS AND RESPONSIBILITIES AND TERMINATION**

17.1 The parties agree that all of Carrington's obligations and responsibilities under this Agreement (save for clauses 1, 4, 6.1(g), 15, 16, 17, 18, 20, 21, 22 and 23) shall terminate on the later of the date that the Defects Notification Period under the WWTP Contract expires or the date that the Defects Notification Period under the Network Contract expires and Carrington has provided Council with the required documentation in accordance with clause 9.10.

17.2 Carrington may, at any time prior to commencement of physical Network Works and physical WWTP Works, respectively, in its sole discretion, terminate this Agreement, elect to not proceed with undertaking the relevant Works and not give effect to the Subdivision Consent by providing not less than 7 days' notice in writing to Council.

**18 ASSIGNMENT**

18.1 Carrington may not assign, novate or otherwise transfer the whole or any part of its interest in this Agreement to a purchaser or purchasers of that land to which the Subdivision Consent relates unless that the purchaser(s) has entered into a deed of covenant with Council to comply with the provisions of this Agreement in place of Carrington.

18.2 Carrington acknowledges that Council may be required to transfer its obligations under this Agreement to a new entity that will be responsible for the Wastewater System arising out of the three waters system reform.

**19 COUNCIL'S CAPACITY**

19.1 Council has signed this Agreement in its non-regulatory capacity. This Agreement does not bind Council in its capacity as a regulatory authority in any way, and any consent or agreement Council gives under this agreement is not an agreement or consent in its regulatory capacity, and vice versa.

19.2 Council will not be liable to Carrington or any other party if, in its regulatory capacity, Council declines or imposes conditions on any consent or approval that Carrington or any other party seeks for the Works or any purpose associated with this Agreement.

19.3 The parties acknowledge that nothing in this Agreement or any approval or consent given by the Council or other action taken by the Council pursuant to this Agreement shall be construed as a fetter or limitation on the exercise of any discretion or power of decision by the Council or power of decision by the Council in its capacity as a consent authority.

**20 DISPUTES**

20.1 If any dispute arises between the parties under or in connection with this Agreement, the parties shall meet and attempt to settle the dispute in good faith.

20.2 If the parties are unable to resolve the dispute under clause 20.1, either party may (by written notice to the other party) require that the dispute be submitted for mediation by a single mediator agreed upon by the parties. If a mediator cannot be agreed upon, the Chair for the time being of Arbitrators & Mediators Institute of New Zealand Inc or his or her nominee shall nominate the mediator.

## **Development Agreement**

- 20.3 Neither party may issue any legal proceedings (other than for urgent interlocutory relief), in respect of any dispute under or in connection with this Agreement, unless that party has first taken reasonable steps to comply with clauses 20.1 and 20.2.

## **21 CONFIDENTIALITY**

- 21.1 Any information pertaining to this Agreement or any Party's business to which the other Party is exposed as a result of the relationship contemplated by this Agreement shall be considered to be "Confidential Information". No Party may disclose any Confidential Information to any person or entity, except as required by law, without the express written consent of the affected Party, which consent shall not be unreasonably withheld.
- 21.2 The parties agree that there will be prior consultation between the parties before any press release or public notification of the Agreement.

## **22 GENERAL**

- 22.1 This Agreement is governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Agreement.
- 22.2 Each party shall sign all documents and do all things as may be reasonably required by the other party to effectively carry out, and give effect to, the terms and intentions of this Agreement.
- 22.3 This Agreement constitutes the entire agreement of the parties relating to the subject matter of this Agreement being the Network Works and WWTP Works, unless stated otherwise, and supersedes all prior discussions, negotiations, representations, warranties, understandings and agreements between the parties relating to this Agreement.
- 22.4 This Agreement may be executed electronically and in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one instrument.

## **23 NOTICES**

- 23.1 Any written notice required to be given pursuant to this Agreement shall (without limitation) be deemed to be validly given if:
- (a) Signed by a duly authorised representative of the party given notice; and
  - (b) Delivered by hand or by e-mail to the intended recipient's physical address or email address as set out below (or to such other physical address or email address that the intended recipient shall notify to the other party by written notice from time to time).

**Development Agreement**

**If to the Council:**

Andy Finch

Private Bag 752  
Memorial Ave  
Kaikohe 0440

Email: Andrew.finch@fndc.govt.nz

**If to Carrington:**

William Tan

109 Maitai Bay Road  
Karikari Peninsula  
Northland

Email: resort@carrington.co.nz

**EXECUTION**

**Signed** for and on behalf of **Far North District Council** by:

.....  
Authorised signatory

.....  
Full name (please print)

**Signed** for and on behalf of **Carrington Estate Jade LP** by its general partner **Gorges Jade Holdings Limited**:

.....  
Authorised signatory

.....  
Full name (please print)

## **SCHEDULE 1 – Schedule of Network Works**

### **Proposed Wastewater System Upgrade**

It is proposed to upgrade a few sections within the Whatuwhiwhi wastewater reticulated system to provide sufficient capacity for the proposed residential development. Please refer to Appendices 1, 2 and 3 for the upgrade plans outlining the proposed upgrades.

This involves upgrading the capacity of pump station PS-SP2630 (PS5) and pump station PS-SP3134 (PS5A). As the northwest wastewater catchment area currently serviced by PS-SP2628 as outlined in the drawings below will be removed from the current catchment area of PS-SP2628, this PS will not need upgrading.

Survey of the existing manholes, ground levels, pump station, inlets and outlets will need to be completed so that accurate long sections can be designed.

New pump stations should have capacity for the peak flow without the use of emergency storage. Emergency storage shall be provided with a capacity of 12-hour average dry weather flow. PS-SP2630 (PS5) will need to have capacity for a flow of 2.27 l/s and an average dry weather flow (ADWF) 12hr storage volume of 19.6 m<sup>3</sup>.

The current outlet for PS5 is a 40mm diameter pipe. The draft Far North Council Engineering Standard (2021) states the minimum pressurized wastewater pipe size for the reticulation system is 50 mm diameter. This standard is not in effect; however, consideration should be taken to upgrade any existing pipes of 40mm diameter. The pressurized pipelines will need to be calculated for sizing and flow velocity once the pumpstation's details are known. It is likely that a 63 mm PE pipe will be appropriate.

The uPVC 100 mm pipeline North of PS5 is proposed to be upgraded to a 150 mm uPVC line in order to comply with the council standards.

The infrastructure servicing Stage 3 (104 allotments) (shown in Appendix 2) will be serviced by PS-SP3134 (PS5a). PS-SP3134 will need to be assessed and upgraded if necessary. PS-SP3134 will need to have capacity for a flow of 2.92 l/s and a PWWF 12hr storage volume of 25.2 m<sup>3</sup>.

The pipeline running parallel to Inland Road does not currently have enough capacity to cope with the estimated peak flow from the proposed development.

The pipeline from manhole SP2535 to manhole SP2532 (shown in Appendix 3) is 100mm in diameter. These lines are directly discharged into by 29 existing residential lots. These lines would need to be upgraded if the development's wastewater discharged into them.

Due to the large number of lots discharging into the Inland Road pipeline and an expected high cost involved with reconnecting the existing residential connections, it is proposed to lay a 150mm pipe beside the existing line, spanning from MH SP2467 to MH SP2532.

A long section of the proposed upgrade to the infrastructure along the North side of the houses boarding Inland Road Existing manhole level data (FNDC Asset data) has been included in the long section.



To the west of Inland Road, a new pipeline is proposed to provide a more direct link to the wastewater treatment plant, bypassing areas with less capacity. A 150mm diameter uPVC pipeline will be placed between MH SP2532 and MH SP2620, with two new manholes added to the line.

The pipeline to the east of the manhole SP2620 will have an increase in flow due to work proposed in Stage 4 and a decrease in flow due to work on Stage 3. The overall effect of the proposed development on the specified pipeline is a decrease in overall flow.

The pipeline carrying the town's wastewater directly to the Wastewater treatment plant, west of manhole SP2620 will not reach capacity with the proposed development. The pipe will be able to allow for approximately 400 additional residential dwellings before the pipeline is at capacity.

**LEGEND**

- WASTEWATER RETICULATION
- CARRINGTON ESTATE JADE
- PARCELS
- PROPOSED NEW LINES
- PROPOSED DECOMMISSIONED LINES
- OPTION 2 REQUIRES POTENTIAL UPGRADES AT PSSA & PSS
- OPTION 2: CATCHMENT REMOVED FROM PSS

**STAGE 3 - 104 LOTS**

**STAGE 4 - 36 LOTS**

**PS 5A**

**PS 5**

**PROPOSED NEW LINE**

**PROPOSED DECOMMISSIONED LINES**

**PROPOSED NEW LINES**

**OPTION 2: NOTES**

GRAVITY LINE CAPACITY TO BE INVESTIGATED BY DETERMINING ULTIMATE LOAD LOT CONNECTIONS MULTIPLIED BY 140%, 4 PERSONS/HOUSEHOLD & x3 PEAK FACTOR.

APPROXIMATE TOTAL LOT CONNECTIONS TO DETERMINE RELEVANT PUMPSTATION AND RISING MAIN CAPACITY (excluding subdivisions, including OTHER current development and Carrington Estate):

PSS:  $(34 \times 36) = 70$  LOTS

PSSA:  $(56 \times 36) = 96$  LOTS

97.5 PERCENTILE (2018-2019) DEMAND: 246m<sup>3</sup>/day.

WHATUMIHIMIHI NUMBER OF LOTS SERVICED: 751

WHATUMIHIMIHI UNSERVICED LOTS EXCLUDING CURRENT DEVELOPMENT: 453

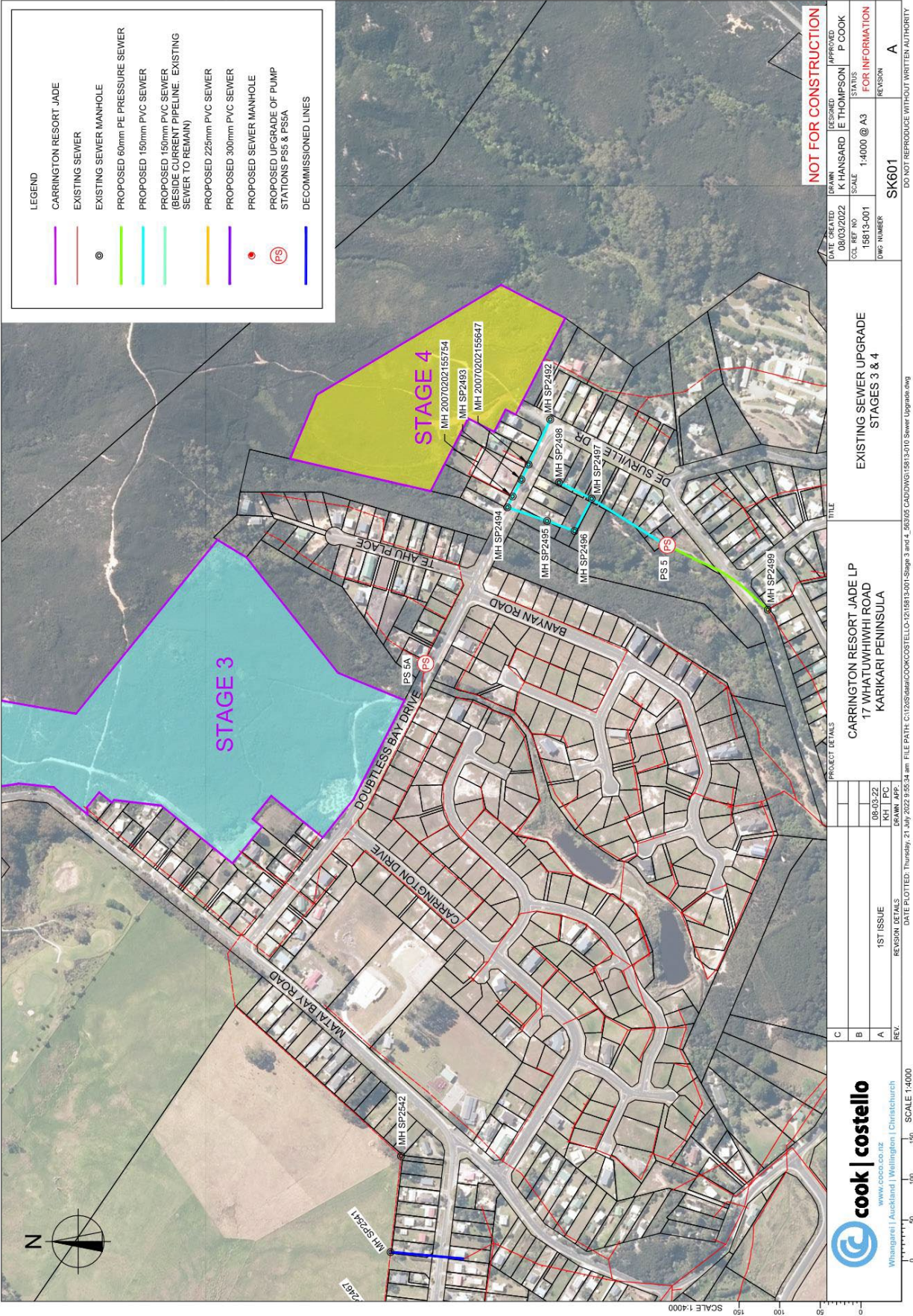
OCTOBER 2019 PEAK DEMAND: 528m<sup>3</sup>/day

JUNE/JULY 2020 PEAK DEMAND: 420m<sup>3</sup>/day

NAME	DATE	STATUS	REVISION
DESIGNED	2018-01-10	DESIGNED	1
CHECKED	2018-01-10	CHECKED	1
APPROVED	2018-01-10	APPROVED	1

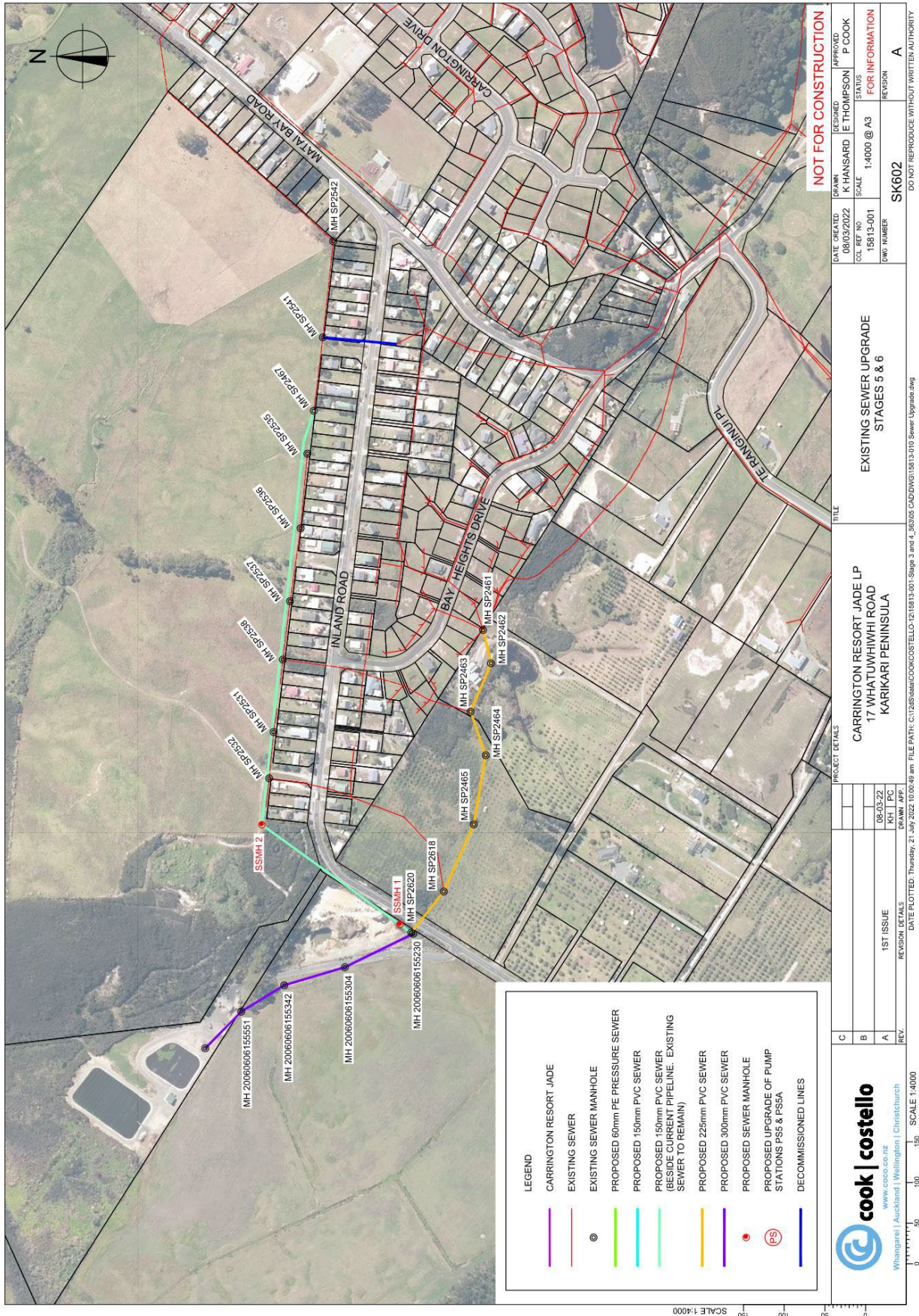


Appendix 2





## Appendix 3



## Appendix 4 – List of materials

Surveying and liaison with engineers	Est	1
Wastewater		
<b>Manholes: Rates include excavation, backfilling, benching, channels, steps and connection to pipes.</b>		
1050mm diameter concrete manhole non trafficable lid (1.0m to 1.8m deep)	Each	5
1050mm diameter concrete manhole non trafficable lid (3.5m to 4.5m deep)	Each	3
<b>Pipes: Rates for pipework include supply, laying, jointing, selected granular fill bedding and testing in trench. Rates for trench excavation include excavating by machine, backfilling with excavated material, maintaining sides of trench and removal of surplus material up to 5km from site.</b>		
150mm PVC SN8	m	1085
Pressure Sewer Main (63mm) PE100 SDR11 PN16	m	155
225mm PVC SN8	m	405
300mm PVC SN8	m	300
Connect existing Pipes: Locate and Break into Existing Manhole and make new/expand existing connection, not exceeding.	Each	25
Trench Shield hire and trenching safety precautions	LS	1



## **SCHEDULE 2 – Schedule of WWTP Works**

The Whatuwhiwhi wastewater treatment plant consists of screened inlet works, an aerated, two-ponds biological treatment stage fitted with growth media, followed by a lift station, a microscreen and a UV treatment system.

It is proposed to upgrade the Whatuwhiwhi wastewater treatment plant under the 'Stage 1' upgrade to provide capacity of 437 m<sup>3</sup>/day average dry weather flow.

### **3.1 Biological Treatment Capacity**

To upgrade the capacity, consideration has been given to the upgrades required to the following parts of the plant:

- Ø The ponds' hydraulic capacity
- Ø The capacity, number and distribution of the PDP air lines
- Ø The number and distribution of the AquaMats (growth media)
- Ø The blower capacity
- Ø The blowers' control system.

#### **3.1.1 Upgrade From Current to Stage 1 Capacity**

**The ponds' hydraulic capacity** including their interconnecting pipework was sized to exceed the 2,000m<sup>3</sup> /day capacity. No upgrade is necessary.

**The PDP air lines** and air distribution system installed in 2008 was already sized to fit the Stage 1 loading. There should therefore be no need to add any PDP pipework as long as the existing pipework was well maintained and has maintained its design output.

**The number of AquaMats** installed in 2008 was – after the plant commissioning and testing – never completed to the requirement of the Stage 1 upgrade. The extra AquaMats were instead stored on site. Stage 1 requires these AquaMats (or an equivalent number of new AquaMats if the original ones cannot be found) to be installed in accordance with drawing ST-100 (see Appendix 2), i.e. 162 AquaMats would need to be added in Pond 1 and 254 AquaMats would need to be added into Pond 2.

**The current blower capacity** with one operating in duty and the other one in stand-by is insufficient to cover the air requirement for the Stage 1 loading. The addition of a third blower to run the plant on a 2 x duty plus 1 x standby blower configuration is needed and should cover the requirements as long as the existing blowers still achieve their design output and the inlet temperature is maintained as per blower requirements.

**The control system (PLC)** for the blower bank was designed to operate the plant automatically on either two or on three blowers. If no changes have been made, the switchover from the two-blower control to the 3-blower operation should happen automatically once the third blower gets connected. The PLC screens should then automatically adapt.

## Appendix 1 – List of materials and works

<b>Table 3.1.1 – Stage 1, Biological Treatment Upgrade</b>			
<b>Item</b>	<b>Description</b>	<b>Unit</b>	<b>Quantity</b>
<b>1.0</b>	<b>Whatuwhiwi WWTP Stage 1 – Biological Treatment Upgrade</b>		
1.1	Establishment, de-establishment and maintaining of H&S, Quality and Environmental Protection plans	LS	
1.2	AquaMats, including floats	LS	416
1.3	Equipment for installation	LS	416
1.4	Installation	LS	
1.5	Additional blower	LS	1
1.6	Installation	LS	
1.7	Electrical / Control	LS	
1.8	Contingency 10% ( <sup>4</sup> )	LS	
1.9	Project management – provisional sum ( <sup>5</sup> )	LS	
	<b>Total Stage 1 – Biological Treatment Upgrade</b>		

1. Assuming all servicing and maintenance requirements and other issues highlighted in g2e's 2015 plant assessment report have been fully addressed and the plant has been well maintained since.

[www.coco.co.nz](http://www.coco.co.nz)





**SCHEDULE 3 – Council and Ventia Health and Safety Policies and Procedures**

## HSW 001 Health, Safety & Wellbeing Management Policy

Reviewed and Adopted: February 2022

Next review by: February 2024

### 1. Objective

Far North District Council (FNDC) is committed to providing and maintaining a safe and healthy working environment for all workers and visitors to its premises.

FNDC will ensure so far as reasonably practicable, that the health, safety and wellbeing of its workers and others are not put at risk by its facilities, work or activities.

### 2. Policy Statement

To ensure and maintain a safe and healthy work environment FNDC commits to the following activities:

#### Planning

- Development of a Health, Safety and Wellbeing focused five-year strategy
- Set Key Performance Indicators (KPIs) for all employed workers with a focus on continuously improving the health, safety and wellbeing in the workplace. These KPIs will be annually reviewed against actual performance
- Work practices are designed to always ensure Councils obligations are met under the Health & Safety at Work Act (2015), relevant Codes of Practices, Guidelines or Standards

#### Hazard Management

- Systematically identify any potential hazards or risks in the workplace, including for those workers who work remotely
- Control hazards and risks so far as reasonably practicable by taking steps to eliminate or minimise the exposure
- Monitor the workplace to ensure the control measures are effective and lead to safer work practices
- Ensure all workers and others are made aware of the hazards in their work area and are adequately trained to enable them to perform their duties in a safe manner

#### Contractor Management

- Working only with contractors who share our health, safety and wellbeing focus
- Have met our prequalification processes, including obtaining our minimum score requirements
- Strive to always adhere to their obligations under the Health and Safety at Work Act (2015)
- That the management of any hazards and/or risks involved with any work is an ongoing conversation between staff and the contractor
- This applies to any Sub contractors who are engaged on behalf of our principal contractors

#### Reporting

- Actively encourage the accurate and prompt reporting and recording of all incidents and accidents involving injury, illness, harm, near misses, damage or risk, through the use of councils reporting system
- Investigate all reported incidents to ensure all contributing factors are identified and where appropriate plans are formulated to take corrective actions, with the primary goal of preventing the incidents from reoccurring
- Distribution of the Health, Safety and Wellbeing monthly reports throughout Council

## Consultation

- Encourage consultation and participation of employed workers in all matters relating to health, safety and wellbeing
- Support elected Health and Safety Representatives (HSR's) in their role on the Health, Safety and Wellbeing Committee
- Performance reviews of employed workers will include a focused health, safety and wellbeing related KPI and discussion

## Responsibilities

FNDC requires active participation from all employed workers to ensure health, safety and wellbeing is a priority in all our workplaces. FNDC shall, where it is reasonably practicable, take responsibility as follows:

### Senior Leadership Team (SLT) to:

- be leading by example a positive safety culture
- have an understanding of their areas of responsibility as an “officer” within the PCBU and exercising due diligence consideration at all times
- take responsibility for the consistent messaging of health, safety and wellbeing outcomes to their departments and groups

### People Leaders to:

- be actively involved in promoting and leading by example a positive safety culture
- supporting workers to achieve positive wellbeing outcomes, including promoting conversations that focus on mental health and building resilience
- have an understanding of the health and safety issues in their area of responsibility and attend appropriate training to maintain this
- take responsibility for the health, safety and wellbeing of their workers including contractors under their direction
- share relevant health, safety and wellbeing related information at team meetings
- engage with workers in focused health, safety and wellbeing discussions, and
- ensure that their workers have access to the right plant, tools, personal protective equipment (PPE) competencies and information to work both safely and efficiently.

### Workers to:

- work in a safe manner, that does not endanger themselves or others
- not proceed and continue to place themselves in harm's way, where they believe the work to be unsafe
- escalate in a timely manner any health, safety and wellbeing issues or concerns when they arise to their people leaders so that solutions and control measures can be put in place,
- proactively raise concerns about their wellbeing situation (including their mental health) when there is a likely impact to their work environment
- ensure they understand and follow all policies, procedures and processes that are applicable to the task at hand (e.g. compliance under reporting of any incidents, safe driving to regulations)
- report all incidents and accidents in a timely manner in councils reporting system
- monitor, supervise and engage with contractors, subcontractors, alliance partners and volunteers, where they undertake work on Council assets on our behalf to ensure they use safe work practices, and actively share in the commitment to this policy.

## Rehabilitation

- FNDC supports the safe return to work of injured employed workers, whether that injury occurred at work or not. These positive return to work outcomes are achieved through the rehabilitation policy and processes and early engagement with the worker and people leader.

### 3. Relevant Legislation, Policies and Procedures

<b>Legislation</b>	Health and Safety at Work Act (2015)
<b>Council Policies and Procedures</b>	All current health, safety and wellbeing policies are on TK3, refer to those for the latest version
<b>Guidance Information</b>	Mental Health Foundation of New Zealand <a href="#">Definition of Wellbeing</a>

### 4. Definitions

<b>Contractor</b>	A person engaged by any person (other than as an employee) to do any work for gain or reward.
<b>Officer</b>	An officer is a person who holds a very senior leadership position and has the ability to significantly influence the management of a PCBU. Organisations can have more than one officer.
<b>Mental Health</b>	Mental health is a state of wellbeing in which a worker realises their own abilities, can cope with the normal stresses of life, can work productively, and is able to contribute to their community.
<b>PCBU</b>	A PCBU is a 'person conducting a business or undertaking'. A PCBU may be an individual person (e.g. a sole trader) or an organisation, however in most cases a PCBU will be an organisation (e.g. a business entity such as a company). FNDC is an undertaking against this definition not a business.
<b>Performance Reviews</b>	These include <i>catch-up</i> conversations, end of year reviews or any performance related conversation that is held and recorded in the performance system, which currently is M7.
<b>Prequalification processes</b>	Currently the process and system FNDC use is SiteWise.
<b>Remote Working</b>	Working outside of your principal place of work, which could be your home or another agreed/approved location.
<b>Reporting system</b>	Currently the system FNDC use is PeopleSafe, which is accessible via TK3 or via the mobile phone App.
<b>Volunteer</b>	A person who: (a) does not expect to be rewarded for work to be performed as a volunteer; and (b) receives no reward for work performed as a volunteer  Does not include a person who is in a place of work for the purpose of receiving on-the-job training or gaining work experience.
<b>Wellbeing</b>	Means we have the tools, support and environments we need to be who we are and to build and sustain lives worth living
<b>Worker</b>	A worker is an individual who carries out work in any capacity for a PCBU. A worker may be an employee, a contractor or sub-contractor, an employee of a contractor or sub-contractor, an employee of a labour hire company, an outworker (including a homeworker), an apprentice or a trainee, a person gaining work

---

experience or on a work trial, or a volunteer worker. Workers can be at any level (e.g. managers are workers too).

Employed worker term used in this policy references those workers who are employed on a permanent (part time or full time), fixed term or casual basis and contract of employment is in place between the individual and FNDC.

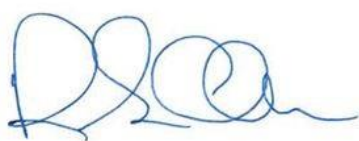
---

## 5. Approval

---

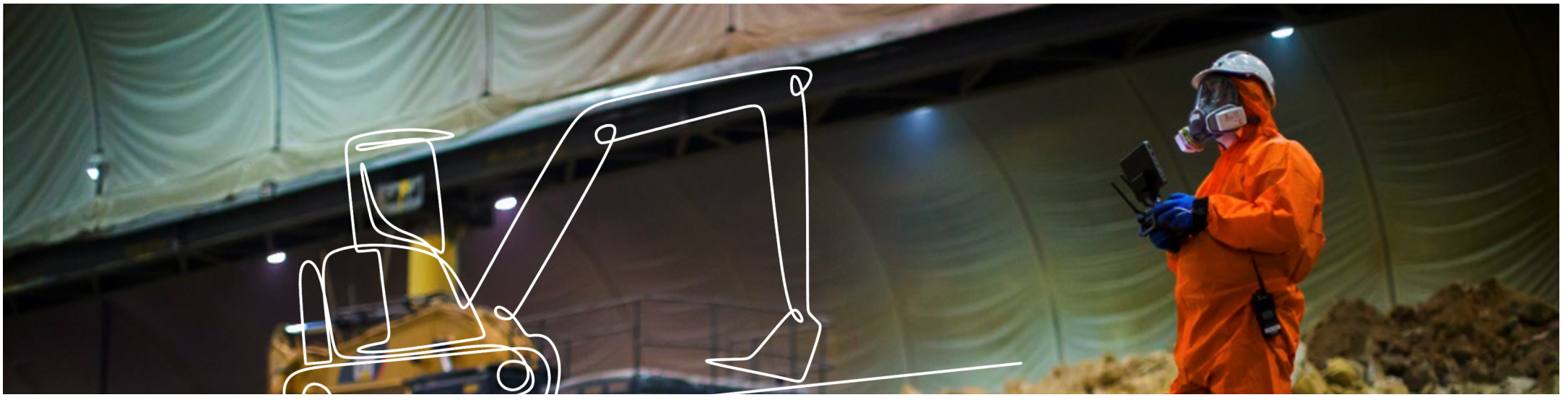
This policy has been approved and will be reviewed every two years or when changes occur to health and safety legislation.

Signed by the Far North District Council – Chief Executive Officer



---

Date: 1 March 2022



# HEALTH AND SAFETY POLICY

## OUR OBJECTIVE

At Ventia, we are committed to putting safety and health above all else. It is our number one brand promise and licence to operate. By redefining service excellence and delivering on our purpose of making infrastructure work for our communities, we will ensure that we deliver a safe and healthy workplace and leave a positive impact on the communities in which we work.

## OUR OBLIGATIONS

At Ventia we will meet this objective through:

- Providing a safe and healthy workplace that promotes a positive, inclusive culture that is based on passionate leadership and effective consultation with employees, other workers and their representatives and relevant external parties.
- Ensuring all workers understand their responsibilities and accountabilities for the effective implementation of our management system and this Health and Safety Policy.
- Ensuring the management system complies with the requirements of the ISO 45001 occupational health and safety management systems standard and that certification is maintained.
- Complying with all relevant regulatory requirements, company policies, standards and processes.
- Allowing workers to participate in health and safety decision making, and engaging with contractors, business partners and subject matter experts (internal and external) to achieve and improve standards and expectations.
- Applying risk management principles to the identification, assessment and control of hazards, work practices and behaviours that could cause incidents, injuries or illness.
- Implementing controls that seek to eliminate risks and where this is not achievable, apply the hierarchy of controls to mitigate risks so far as is reasonably practicable.
- Empowering workers with the authority to speak up and to report any unsafe work practices and unacceptable behaviours.
- Establishing appropriate safety strategies, objectives and targets, and programs focused on safety, health and wellbeing.
- Providing appropriate information, training, supervision and resources that assist all workers to implement and maintain our safety management systems, deliver on safety and health targets and maintain a mentally healthy workplace.
- Managing safety incidents, close calls and hazardous conditions consistently through early identification, notification, methodical investigation, reporting and the sharing of learnings across the organisation.
- Encouraging workers to maintain a positive mental health, a healthy balance between work, family and friends and actively promote the prevention of work-related injury and ill health.
- Monitoring the effective implementation of our Health and Safety Policy, our safety management system, and health and safety performance measured against objectives and targets to ensure continuous improvement aimed at eliminating workplace injuries and illness.
- Reporting on our health and safety performance and sharing that information with our workers and other interested parties.
- Sharing our Health and Safety Policy with all workers, visitors, contractors and interested parties.
- Conducting a formal review of our Health and Safety Policy at regular intervals to ensure it remains effective, relevant and appropriate to the health and safety risks in our workplace.



Authorised by:

**Dean Banks, Group Chief Executive Officer**

Board approved on: 31 August 2021

VENTIA-1039959896-6181

