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**NORTHLAND REGIONAL COUNCIL, LAND/RIVERS DEPARTMENT,
PO BOX 9021, WHĀNGĀREI MAIL CENTRE, WHĀNGĀREI 0148**

To undertake the following activities associated with the construction and operation of a new flood detention dam to reduce flooding within the Raumanga Stream catchment and the Whāngārei Central Business District on:

Dam

Lots 6 and 11 DP 109143, Lots 14 and 24 DP 136445, Lots 11, 12 and 24 DP 136446, Lots 1 and 2 DP 199877, and road reserves (Kotuku Street and unformed portion of Raumanga Valley Road) at or about location co-ordinates 1717008E 6043723N.

Borrow and Unsuitable Disposal Areas

Lot 2 DP 151239, Lot 41 DP 59265 and Lot 36 DP86241 at or about location co-ordinates 1716645E 6043747N.

Stormwater Detention Area

Lot 6 DP 109143, Lots 15, 16, 17, 36 and 41 DP 59265, Lots 6, 7 and 8 DP 136445, Lots 9, 10, 11, 24 and 25 DP 136446, Lots 1, 2 and 3 DP 151239, Lot 4 DP 19724, Lot 33 DP 68643, Lots 35 and 36 DP 86241, Pt Lot 1 DP 86583, Lot 8 DP 158621, Lot 1 177316, Lot 2 DP 374345 and road reserves (Kotuku Street and unformed portion of Raumanga Valley Road) at or about location co-ordinates 1716749E 6043621N.

Note: All location co-ordinates in this document refer to Geodetic Datum 2000, New Zealand Transverse Mercator Projection.

Land Use Consents:

- AUT.031159.01.01** To construct an approximately 20 metre high earth and rockfill flood detention dam and associated structures on the bed of the Nihotetea Stream.
- AUT.031159.02.01** To carry out earthworks (cut and fill) totalling approximately 90,000 cubic metres including the excavation of spillways and a borrow area for dam construction purposes and the deposition of unsuitable material at a disposal site.
- AUT.031159.03.01** To carry out earthworks and vegetation clearance within the Riparian Management Zone of the Nihotetea Stream.

Discharge Permit:

- AUT.031159.04.01** To divert and discharge stormwater from areas of land disturbance activity.

Water Permits:

- AUT.031159.05.01** To dam and divert the Nihotetea Stream to allow construction and operation of a flood detention dam.
- AUT.031159.06.01** To dam the Nihotetea Stream during flood flow conditions.

Discharge Permit:

- AUT.031159.07.01** To discharge dust to air from earthworks and road construction and maintenance activity.

Subject to the following conditions:

AUT.031159.01.01 – Dam Construction

AUT.031159.02.01 – Earthworks

AUT.031159.03.01 – Vegetation Clearance

- 1 The dam shall be sited as shown on the following plan (**attached**):
 - *“Kotuku Detention Dam: Dam Site Plan – Crest Level RL 67.0m”*; Riley Consultants Drawing No. 11261/1-14; dated September 2012.
- 2 The dam crest level shall not exceed 68 metres above the zero level of the One Tree Point 1964 vertical datum.
- 3 The Consent Holder shall finalise the design of the dam and all its associated components and ancillary structures, and construct and maintain these, to the standards recommended in the operative version of the New Zealand Society on Large Dams (NZSOLD) Dam Safety Guidelines. This shall include the commissioning of an external peer review of the final design report and the requirement that the construction is supervised by a contractor with relevant prior experience in High Potential Impact dam construction.
- 4 In addition to the requirements of Condition 3, the Consent Holder shall carry out the earthworks generally in accordance with the following Riley Consultants document *“Earthworks and Sediment Control Report – Proposed Kotuku Detention Dam”*; Reference 11261/1 – E; dated 20 December 2012 and the following plans (**attached**):

- (a) “Kotuku Detention Dam: Silt Control Plan – Borrow Area and Unsuitable Disposal Area”; Drawing No: 11261-20; dated November 2012;
 - (b) “Kotuku Detention Dam: Silt Control Plan – Spillways and Dam Filling Stages”; Drawing No: 11261/1-21; dated November 2012;
 - (c) “Kotuku Detention Dam: Sediment Control – Typical Details”; Drawing No: 11261-22; dated November 2012;
 - (d) “Kotuku Detention Dam: Sediment Control – Typical Sediment Pond Details”; Drawing No: 11261-23; dated November 2013;
- 5 The Consent Holder shall notify the Council’s Monitoring Manager in writing of the date that earthworks are intended to commence, at least two weeks beforehand. The Consent Holder shall arrange for a site meeting between the Consent Holder’s principal earthmoving contractor and the Council’s assigned monitoring officer, which shall be held on site prior to any earthworks commencing. No works shall commence until the Council’s assigned monitoring officer has completed the site meeting.
- Advice Note:** *Notification of the commencement of works may be made by email to mailroom@nrc.govt.nz.*
- 6 No earthworks shall be carried out between 1 May and 30 September in any year unless the prior written agreement of the Council’s Monitoring Manager has been obtained.
- Advice Note:** *Any request for an earthworks extension should be made at least two weeks prior to 1 May and should be accompanied by details of the proposed additional sediment controls, the reason for the requested extension, and the potential effects on soil conservation and downstream water quality. Any extension will be treated on a case by case basis.*
- 7 Sediment control measures shall be constructed and maintained in accordance with the principles and practices contained within the document entitled “Erosion and Sediment Control – Guidelines for Land Disturbing Activities”, Auckland Regional Council Technical Publication No. 90, dated March 1999 (TP 90), including December 2007 updates. Where there are inconsistencies between any part of TP 90 and the conditions of these consents, then the conditions of these consents shall prevail.
- Advice Note:** *The above standard is regarded as a minimum and additional measures may be necessary, such as the use of flocculants for soils with high clay contents, where discharges are unable to meet water quality standards.*
- 8 All works, including the installation of all erosion and sediment controls, shall be supervised by a suitably qualified and experienced person who shall ensure that all works are undertaken in a manner that ensures the long term stability of the site.

- 9 Prior to the commencement of earthworks operations, the Consent Holder shall provide a stabilised construction entrance(s), as specified in Section 1.8 of TP 90, to minimise the tracking of spoil or debris onto off-site public road surfaces. All material tracked onto off-site surfaces as a result of the Consent Holder's operations shall be removed as soon as possible, but at least daily. The stabilised construction entrance(s) shall be maintained throughout the duration of earthworks operations to the above standard.
- 10 The Consent Holder shall, prior to the commencement of any earthworks, prepare and submit an Erosion and Sediment Control Plan (ESCP) which sets out the practices and procedures to be adopted to achieve compliance with the conditions of these consents. The ESCP shall be submitted to the Council's Monitoring Manager for certification. No earthworks shall be undertaken until this certification has been given in writing. The ESCP shall include:
- (a) The expected duration (timing and staging) of the major cut and fill operations, drainage works, disposal sites for unsuitable materials/overburden, and clean water diversions.
 - (b) Diagrams and/or plans, of a scale suitable for on-site reference, showing the locations of the major cut and fill operations, disposal sites for unsuitable materials, erosion and silt control structures/measures, and water quality sampling sites.
 - (c) Details of erosion and sediment controls including specific pond design and calculations as required.
 - (d) Supporting calculations and catchment boundaries for the erosion and sediment controls.
 - (e) The commencement and completion dates for the implementation of the proposed erosion and sediment controls.
 - (f) Methods to be used to ensure stability of batter faces.
 - (g) Details of surface re-vegetation of disturbed sites and other surface covering measures to minimise erosion and sediment runoff following construction.
 - (h) Measures to avoid dust nuisance to neighbouring properties during dam construction.
 - (i) Measures to minimise sediment being deposited on public roads, beyond the works area.
 - (j) Monitoring procedures focused on, but not limited to, visual monitoring to ensure adverse effects on the water quality of the Nihotetea Stream are minimised.
 - (k) A monitoring programme dealing with significant sediment plumes that are a result of the works authorised by this Consent, being plumes that persist for longer than 48 hours. The monitoring programme shall include, but not be limited to:
 - (i) Regular task specific visual monitoring of sediment plumes in the Nihotetea Stream;
 - (ii) Consultation between the site manager and the Council's Monitoring Manager regarding any sediment plumes that persist for more than 48 hours;

- (iii) Water quality sampling and analysis procedures to quantify the downstream water quality effects listed in Condition 34 should sediment plumes persist for more than 48 hours.
- (l) Measures to prevent spillage of fuel, oil and similar contaminants.
- (m) Contingency containment and clean-up provisions in the event of accidental spillage of hazardous substances.
- (n) Means of ensuring contractor compliance with the ESCP.
- (o) The name and contact telephone number of the person responsible for monitoring and maintaining all erosion and sediment control measures.
- (p) Contingency provisions for the potential effects of large/high intensity rainfall and flooding events.

The Consent Holder shall undertake the activities authorised by these consents in accordance with the certified ESCP.

Advice Note: *For the purposes of this condition, certification means that the ESCP is considered to meet the requirements of this condition. Certification may be withheld by the Council's Monitoring Manager where he/she has doubts about the adequacy of the practices and procedures to be adopted to achieve consent compliance.*

The Consent Holder is encouraged to discuss its proposed ESCP with Council staff prior to finalising this plan.

The ESCP may be certified on a stage by stage basis as appropriate.

- 11 The Consent Holder may review and amend the ESCP at any time during the term of these consents provided that the amendments still achieve compliance with the conditions of these consents. The amended ESCP shall be submitted to the Council's Monitoring Manager for re-certification. The Consent Holder shall undertake the activities authorised by these consents in accordance with the latest certified version of the ESCP.
- 12 Erosion and sediment controls shall be installed prior to the commencement of any earthworks (other than those required for the erosion and sediment controls) within the works area.
- 13 The Consent Holder shall submit a certificate to the Council, signed by an appropriately qualified and experienced person, stating that the erosion and sediment controls have been constructed in accordance with the Erosion and Sediment Control Plan (ESCP), and prior to the commencement of other works. Information supplied shall include:
 - (a) Contributing catchment area.
 - (b) Retention volume of structures.
 - (c) Shape of structures.
 - (d) Position of inlets/outlets.
 - (e) Stabilisation of the structures.

- (f) Size of diversions and method of stabilisation.

Advice Note: *An appropriately qualified and experienced person is one who has attended an 'Erosion and Sediment Control – Plan Preparers' course conducted by the Auckland Council, or similar, and has at least two years' experience in the field of erosion and sediment control works.*

- 14 The Consent Holder shall, prior to the commencement of any site work, prepare and submit a Construction Management Plan (CMP) which sets out the methodologies, practices and procedures to be adopted in order to manage the operational aspects of the proposed work. The CMP shall be submitted to the Council's Monitoring Manager for certification. No works shall be undertaken until this certification has been given in writing.
- 15 As a minimum, the CMP required under Condition 14 shall include the following:
- (a) A dust management plan;
 - (b) Construction methodology and timetable;
 - (c) Environmental emergency response procedures;
 - (d) Processes to be followed in wet weather;
 - (e) A maintenance programme for haul and access roads;
 - (f) Security systems proposed for any refuelling and maintenance depots;
 - (g) Procedures for addressing any potential impacts on archaeological sites;
 - (h) A programme for the education and control (with respect to the environment) of employees and subcontractors to ensure that all personnel are briefed on environmental issues prior to commencing work;
 - (i) Mitigation and contingency measures for (but not limited to) the following:
 - (i) Erosion control and construction material loss;
 - (ii) Spills (including oils, hydraulic fluids, concrete washings);
 - (iv) Occurrences of non-compliance;
 - (v) Failure of protection works or earthworks;
 - (vi) Water collection management.

The Consent Holder shall undertake the activities authorised by these consents in accordance with the certified CMP.

Advice Note: *For the purposes of this condition, certification means that the CMP is considered to meet the requirements of this condition. Certification may be withheld by the Council's Monitoring Manager where he/she has doubts about the adequacy of the practices and procedures to be adopted to achieve consent compliance.*

The Consent Holder is encouraged to discuss its proposed CMP with Council staff prior to finalising this plan.

The CMP may be certified on a stage by stage basis as appropriate.

- 16 The CMP shall be updated throughout the course of the project to reflect changes to components of the project and the ESCP required under Condition 10. The CMP shall be reviewed and revised as necessary prior to construction and at the commencement and completion of each stage and/or earthworks season. The updated or revised CMP shall be submitted to the Council's Monitoring Manager for re-certification. The Consent Holder shall undertake the activities authorised by these consents in accordance with the latest certified version of the CMP.
- 17 The Consent Holder shall at least one month before construction works begin, submit to the Council's Monitoring Manager, a 'Stream Compensation Plan' (SCP) which identifies a section or sections within the Nihotetea Stream system to be restored or enhanced using the Stream Ecological Valuation methodology and associated Environmental Compensation Ratio (ECR) calculation method as set out in Auckland Council Technical Report 2011/009, and which describes the actions to be carried out to achieve environmental compensation and the timeframes for these to be completed. The SCP shall identify the methods and measures by which stream habitat improvements are to be quantified
- 18 The Consent Holder shall at least one month before construction work begins submit to the Council's Monitoring Manager an 'Indigenous Vegetation Mitigation Plan' (IVMP) that shall include:
 - (a) Planting proposals in the catchment upstream of the proposed dam footprint, with a particular focus on areas outside of riparian margins.
 - (b) The measures to be undertaken to strengthen or complement the natural vegetation patterns within the site and immediately surrounding area.
- 19 The Consent Holder shall ensure that a copy of these consents is provided to the person(s) who is to carry out the work, prior to construction commencing. A copy of these consents shall be held on site and be available for inspection during construction.
- 20 The Consent Holder shall remove all unwanted materials and refuse from the consent area upon the completion of the works authorised by these consents, to the satisfaction of the Council's Monitoring Manager.
- 21 The Consent Holder shall minimise contamination of surface water by ensuring that slash, soil, debris and detritus associated with the exercise of these consents, (other than for works being undertaken in the bed of the waterbody), is not placed in a position where it may be washed into the downstream waterbody.
- 22 All earthworks operations shall be carried out in a manner that minimises the potential for slope instability and soil erosion. Effective mitigation measures shall be installed as required to mitigate and/or remedy any slope failures.

- 23 Borrow areas shall be managed to minimise erosion or movement of sediment into watercourses and, in addition to the seasonal restriction in Condition 5, no earthworks shall be carried out under weather conditions which would lead to scouring of slopes and soil erosion.
- 24 In the event of archaeological sites or koiwi being uncovered, activities in the vicinity of the discovery shall cease. The Consent Holder shall then consult with local iwi and the New Zealand Historic Places Trust, and shall not recommence works in the area of the discovery until the relevant Historic Places Trust approvals to damage, destroy or modify such sites have been obtained.
- 25 All bare areas of land shall be covered with aggregate, or top soiled and established with a suitable grass/legume mixture to achieve an 80% groundcover by 31 May immediately following the works, or within three months of the completion of earthworks in each construction season, whichever is the sooner. Temporary mulching or other suitable ground cover material shall be applied to achieve total ground cover of any areas unable to achieve the above requirements.

Advice Note: *The purpose of this condition is to minimise erosion and sedimentation during the winter months. Without suitable groundcover being established during the autumn period there is a much higher potential for soils to be eroded especially during prolonged wet periods and an inability to obtain satisfactory compaction.*

- 26 Fuelling and maintenance of plant and equipment used in the exercise of these consents shall not be carried out in any location where fuel or oil could enter any water.
- 27 The Consent Holder shall ensure that the contractor(s) exercising these consents have a spill kit on site and a written Accidental Oil Spill Clean-up Procedure which shall be followed in the event of an accidental oil spill. The Consent Holder shall ensure that a copy of the Accidental Oil Spill Clean-up Procedure is provided to the person who is to carry out the work, prior to exercising the consents.
- 28 The Consent Holder shall avoid the tracking of sediment, spoil and/or debris onto public road surfaces beyond the extent of the works area.

AUT.031159.04.01 – Stormwater Diversion and Discharge

- 29 Drains and cut-offs shall be constructed to divert stormwater and minimise erosion of land/fill slopes. Those drains and cut-offs shall be designed by an appropriately qualified engineer based on hydrological modelling of the site undertaken in accordance with “Auckland Regional Council Technical Publication 108: Guidelines for Stormwater Runoff Modelling in the Auckland Region” (“TP 108”) and taking into account that the site is in Whāngārei. At least one month prior to the construction of the drains and cut-offs, the Consent Holder shall provide the design details (including the hydrological modelling undertaken) to the Council’s Monitoring Manager for certification that they have been done in accordance with TP 108 and take into account

that the site is in Whāngārei. All channels on grades greater than 5% shall be protected to avoid creating erosion features.

- 30 The transportation of material shall be undertaken in a manner that avoids damaging diversion drains and other sediment control structures.
- 31 All discharges of sediment laden stormwater from areas of land disturbance, including any haul roads, shall be via suitably designed and constructed sediment detention structures.
- 32 The Consent Holder shall remove accumulated sediment from each sediment detention structure before the sediment level reaches 20% of its total volume (holding capacity). All sediment removed from the sediment detention structures shall be placed in a stable position where it will not enter any waterbody nor re-enter any sediment detention structure.
- 33 All offsite stormwater shall, as far as is practicable, be directed away from earthworks areas and no drainage pathways shall be constructed or permitted to flow over fill areas in a manner that creates erosion of the fill material.
- 34 The exercise of these consents shall not result in any of the following effects, either by themselves or in combination with other authorised discharge activities, on the water quality of the Nihotetea Stream, as measured at or beyond 100 metres downstream of the most downstream extent of the construction works, compared with a site immediately upstream of the construction works, during the same sampling event:
 - (a) The production of any conspicuous oil or grease films, scums or foams, floatable or suspended materials, or emissions of objectionable odour; or
 - (b) An increase in suspended solids concentration by more than 100 grams per cubic metre above the upstream suspended sediment concentration.

AUT.031159.05.01 – Damming and Diversion for Service Spillway

- 35 The Consent Holder shall provide final design drawings of the bund, diversion channel sections and service spillway, including the intake and outlet (stilling basin) structures, to the Council's Monitoring Manager for certification prior to the commencement of any construction or installation work. The final designs shall ensure that the structures are protected from erosion.

Advice Note: *For the purposes of this condition, certification means that the final designs are considered to meet the requirements of this condition. Certification may be withheld by the Council's Monitoring Manager where he/she has doubts about the adequacy of the designs to achieve consent compliance.*

- 36 The Consent Holder shall notify the Council's Monitoring Manager in writing of the date that the damming and diversion is to be implemented, at least two weeks beforehand.

Advice Note: Notification of the commencement of works may be made by email to mailroom@nrc.govt.nz.

- 37 The bund used to permanently divert the stream flow through the service spillway shall be constructed as rapidly as possible so as to minimise sediment release into the Nihotetea Stream.
- 38 Within one year following completion of the dam and for a period of not less than two consecutive years but not exceeding five consecutive years, the Consent Holder shall carry out a quantitative annual survey specifically designed to determine the relative success of upstream movement of elvers through the service spillway and into the upstream Nihotetea Stream catchment. The findings of each annual survey shall be provided to the Council's Monitoring Manager by 1 May each year.
- 39 After five consecutive years, or at such early time as may be agreed in writing by the Council's Monitoring Manager, a report shall be prepared by a suitably qualified and experienced person which analyses the results of the annual surveys required under Condition 38 and, based on this information and any other relevant research, objectively assesses whether elver movement is restricted by the dam to the extent that the long-term sustainability of upstream eel populations is placed at risk. A copy of the report shall be provided to the Council's Monitoring Manager

Advice Note: Written agreement to earlier evaluation of annual survey results will depend on the sufficiency of the collected information to be able to make the determination required in the report.

- 40 If the assessment report prepared under Condition 39 determines that elver movement through the service spillway is occurring at levels sufficient to sustain the upstream eel populations, then no further action is required to be undertaken by the Consent Holder. Alternately, if the assessment report determines that elver movement through the service spillway is not occurring at levels sufficient to sustain the upstream eel populations, then the Consent Holder shall develop and implement a trap and transfer system to move elvers from below the dam to the stream area above it.
- 41 The trap and transfer system required under Condition 40 shall include an appropriate programme for elver trapping and transfer activity and shall be developed by a suitably qualified and experienced person with expertise in such systems. Prior to commencement of the system development, the qualifications and experience of the person shall be provided to the Council's Monitoring Manager for certification that the person is suitably qualified and experienced. The trap and transfer system shall be completed and implemented within 12 months of certification the suitably qualified and experienced person.

Advice Note: The existing double culvert located upstream of the proposed dam footprint is also to be removed, or replaced with a fish friendly culvert. No consent is required provided the replacement complies with the permitted activity rules of the Regional Water and Soil Plan.

AUT.031159.06.01 – Damming during Flood Flow Conditions

- 42 The dam service spillway (and any replacement of the upstream culvert) shall allow free flow of water at all times and any defects that would compromise their integrity shall be promptly repaired using methods and materials designed for that purpose.
- 43 The Consent Holder shall maintain the dam and all associated structures and facilities covered by these consents, in good order and repair.
- 44 The Consent Holder shall prepare and implement a documented long-term maintenance and monitoring programme covering inspections, monitoring of dam and stormwater detention area erosion, and performance after flood events. A copy of the maintenance and monitoring programme shall be provided to the Council's Monitoring Manager.

AUT.031159.07.01 – Discharge to Air

- 45 The Consent Holder's operations shall not give rise to any discharge of contaminants (e.g. dust), at or beyond the boundaries of the properties legally described for the dam construction and the borrow and unsuitable disposal areas in the preamble to these consents, which is noxious, dangerous, offensive or objectionable to such an extent that it has, or is likely to have, a more than minor adverse effect on the environment. Dust control measures shall be readily available to ensure compliance with this condition.

General Conditions Applying to All Consents

- 46 The Consent Holder shall, for the purposes of adequately monitoring the consent as required under Section 35 of the Act, on becoming aware of any contaminant associated with the Consent Holder's operations escaping otherwise than in conformity with these consents:
 - (a) Immediately take such action, or execute such work as may be necessary, to stop and/or contain such escape; and
 - (b) Immediately notify the Council by telephone of an escape of contaminant; and
 - (c) Take all reasonable steps to remedy or mitigate any adverse effects on the environment resulting from the escape; and
 - (d) Report to the Council's Monitoring Manager in writing within one week on the cause of the escape of the contaminant and the steps taken or being taken to effectively control or prevent such escape.

With regard to telephone notification, during the Council's opening hours, the Council's assigned monitoring officer for these consents shall be contacted. If that person cannot be spoken to directly, or it is outside of the Council's opening hours, then the Consent Holder shall report the escape of contaminants to the Council's Environmental Hotline.

- 47 The Council may, in accordance with Section 128 of the Resource Management Act 1991, serve notice on the Consent Holder of its intention to review the conditions annually during the month of May for any one or more of the following purposes:

- (a) To deal with any adverse effects on the environment that may arise from the exercise of the consent and which it is appropriate to deal with at a later stage; or
- (b) To require the adoption of the best practicable option to remove or reduce any adverse effect on the environment.

The Consent Holder shall meet all reasonable costs of any such review.

Advice Note: *In addition to Condition 47, the Council may, in accordance with Section 128 of the Resource Management Act 1991, serve notice on the Consent Holder of its intention to review the conditions any time for the following purposes:*

- (a) *To provide for compliance with rules relating to minimum standards of water quality or air quality in any regional plan that has been made operative since the commencement of the consent; or*
- (b) *To provide for compliance with any relevant national environmental standards that have been made; or*
- (c) *Where there are inaccuracies in the information made available with the application that materially influenced the decision on the application and where the effects of the exercise of consent are such that it is necessary to apply more appropriate conditions.*

48 For the purposes of the lapsing provisions of section 125 of the Act, these consents shall not lapse until their expiry date.

EXPIRY DATES:	AUT.031159.01.01 DAM CONSTRUCTION	30 JUNE 2048
	AUT.031159.02.01 EARTHWORKS	30 JUNE 2023
	AUT.031159.03.01 VEGETATION CLEARANCE	30 JUNE 2023
	AUT.031159.04.01 STORMWATER DIVERSION & DISCHARGE	30 JUNE 2023
	AUT.031159.05.01 DAMMING & DIVERSION	30 JUNE 2048
	AUT.031159.06.01 DAMMING	30 JUNE 2048
	AUT.031159.07.01 DISCHARGE TO AIR	30 JUNE 2023

Note: *The plans attached to this consent are reduced copies and therefore may not be to scale and may be difficult to read. In the event that compliance and/or enforcement action is to be based on compliance with the attached plans, it is important that the original plans are sighted and used. Originals of the plans referred to are available for viewing at the Council's Whāngārei office.*

Please note that this consent was issued on the Twentieth day of September 2013 by Rob van Voorthuysen who has signed the decision as Hearings Commissioner on the Twenty Third day of August 2013, being the date of the Hearings Commissioner's decision.