

**Before the Independent Hearing Commissioners appointed by
Gisborne District Council – Te Kaunihera o Te Tairāwhiti**

Under the Resource Management Act 1991 (the **RMA**)

In the matter of applications LR-2026-113411-00, LV-2026-113442-0, LL-2026-113443-00 and WS-2026-113444-00 by Gisborne District Council (Rivers and Land Drainage) under section 88 of the Act for land use, vegetation clearance, works in a river bed, earthworks and water take activities for the Te Karaka Flood Scheme Upgrade, Te Karaka, Tairāwhiti

**Reply legal submissions on behalf of Gisborne
District Council | Te Kaunihera o Te Tairāwhiti**

9 October 2026

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Reply Legal submissions on behalf of Gisborne District Council | Te Kaunihera o Te Tairāwhiti

1 Introduction

- 1.1 Gisborne District Council (**Applicant**) has applied for a resource consent for stopbank upgrade works at Te Karaka (**proposal**). The hearing for the application was conducted on 28 and 29 September 2026. The Applicant filed legal submissions addressing a range of issues ahead of the hearing.
- 1.2 These submissions respond to legal issues that have arisen during the hearing, specifically:
 - (a) Identification of resource consents required;
 - (b) Gateway test for non-complying activities;
 - (c) The role of s 6(e) of the Resource Management Act 1991 (**RMA**) in assessing the application, including the need for consent for an alternative alignment for the Wi Pere Trust whenua;
 - (d) Effects on productive land;
 - (e) Adequacy of information regarding performance and hydrology effects of the proposed stopbanks;
 - (f) Whether an adjournment of the hearing to continue negotiations is appropriate, including the circularity problem posed by parallel Public Works Act 1981 (**PWA**) and RMA processes;
 - (g) The relevance of the decision not to proceed with the option of raising the level of the existing stopbank (referred to throughout the hearing as **Option 1**).
- 1.3 The Applicant maintains that the planning framework strongly supports the proposal. The stopbanks are infrastructure with significant public benefits for the Te Karaka community, which was severely effected by Cyclone Gabrielle. The evidence regarding flooding effects and the process for deciding on the specific proposal indicate that there were trade-offs involved in all options, with the location of the stopbank necessarily resulting in increased adverse effects in some locations and positive effects in others.

2 Identification of resource consents required

- 2.1 Questions arose during the hearing as to whether all necessary resource consents had been identified, in particular those arising from the stopbanks' underlying zoning.
- 2.2 Mr Exeter and Ms Michalikis have examined this question and addressed in their joint witness statement (**JWS**). The only additional consent that might be required is for rule DD1.6.1(32) of the Tairāwhiti Resource Management Plan (**TRMP**) (an activity in the General Residential Zone not covered by other specific

rules). Mr Exeter's view is that this consent is not required as the activity is covered by rules elsewhere in the TRMP. His rationale is set out in Appendix B to the JWS.

- 2.3 The Applicant submits that Mr Exeter's interpretation is correct, noting that rule DD1.6.1(32) does not state that it applies when no other rules in the General Residential Zone chapter apply: rather, it applies when an activity in the General Residential Zone is not covered by rules for permitted, controlled, restricted discretionary and discretionary activities. There is a comprehensive regime for management of flood protection works in the TRMP,¹ which provide rules for this activity. Mr Exeter makes the point that under the TRMP, including its Area-based provisions Chapter, regional and district rules are to be read together rather than in isolation from each other.
- 2.4 The alternative interpretation would create an outcome where a residual catch-all rule in the General Residential Zone transformed activities that have been provided for elsewhere in the TRMP into non-complying activities. This result would not be limited to stopbanks and would have wider ramifications that seem inconsistent with the intent and structure of the TRMP. For example, there is no provision for earthworks in the GRZ rules table: if Mr Exeter's interpretation is not adopted, all earthworks in the GRZ would be classified as non-complying activities.
- 2.5 If, contrary to our submission, the Panel were to accept that this additional consent is required, the Applicant submits that is within the Panel's power to grant it. The application contains a clear description of what is proposed. The Courts have faced the question of whether consent requirements can be identified during the consenting process, or whether they have to be identified from the outset. The Courts have taken a "substance over form" approach and confirmed that as long as the substance of the matter is properly considered, the exact form of an application is not determinative.²

3 Gateway test for non-complying activities

- 3.1 The Applicant's position remains that the application for the stopbank should be treated as having discretionary status. The flapgates on the culverts should be treated as a discrete non-complying activity. During the hearing, Commissioner Hill suggested that the culvert activities could be bundled together as a non-complying activity and the Applicant accepts that is an available approach.
- 3.2 If, contrary to our submission, the Panel was to accept that consent under rule DD1.6.1(32) is required, then the consequence could be that the entire proposal is rendered non-complying.
- 3.3 Mr Exeter and Ms Michalakakis have considered this possibility in the JWS. They consider that the "gateway" test under s 104D of the RMA is met by the proposal. The Applicant's legal submissions prior to the hearing addressed the approach to considering the alignment of the proposal with the TRMP, in the context of s 104D.

¹ Tairāwhiti Resource Management Plan (TRMP), C8.2.

² *Body Corporate 97010 v Auckland City Council* (2000) 6 ELRNZ 303 at [49]-[50], referencing *Sutton v Moule* (1992) NZRMA 41 at 47.

4 Duty to recognise and provide for the relationship of Māori to their whenua

- 4.1 A number of matters were raised in the hearing that are relevant to the consideration of the relationship between Māori and their whenua, and engagement and consultation with tangata whenua through the application process. Wi Pere Trust have submitted that the Applicant has failed its obligations under s 6(e) of the RMA, which requires decision-makers to recognise and provide for the relationship of Māori with their ancestral lands.
- 4.2 The updated objectives and policies assessment sets out the TRMP policies relevant to Māori interests that are applicable to this application. These include:
- (a) Objectives and policies relating to the principles of the Treaty of Waitangi, including that Council's right to manage natural and physical resources is subject to the protection of rangatiratanga, to uphold the rangatiratanga of iwi o Tairāwhiti, to promote greater partnership between Council and iwi o Tairāwhiti and to actively protect mana taiao and taonga;³
 - (b) Objectives and policies relating to kaitiakitanga, including the requirement to consult with iwi and hapū, recognise and provide for kaitiaki and encourage applicants to consult with tangata whenua;⁴
 - (c) The objective to promote the preservation and protection of sites of value to Māori;⁵
 - (d) The objective to recognise and provide for the relationship of Māori with their culture, traditions, ancestral lands and other resources, and policy of recognising that individual iwi, hapū and marae have their own priorities and preferences;⁶
 - (e) To recognise and provide for the kaitiaki role of iwi and hapū in freshwater management and ensure their values and interests are reflected in the decision-making process, especially when actions are taken to sustain and restore the mauri of waterbodies;⁷
 - (f) Mana whenua values, matauranga and tikanga are reflected in resource management processes and decision making;⁸
 - (g) To recognise and protect heritage values including those of Māori;⁹
 - (h) Objectives and policies regarding papakainga land, including providing Māori with the freedom to establish and develop papakainga.¹⁰

³ TRMP, B.1.2.1(1), B.1.2.2(1)-(5).

⁴ TRMP, B.1.3.1(1) and B.1.3.2(1)-(4).

⁵ TRMP, B.1.4.2(1).

⁶ TRMP, B.1.4.2(2) and B.1.4.2(1).

⁷ TRMP, B.6.2.1(9)-(10) and B.6.2.2(2)-(3).

⁸ TRMP, B.6.2.1(11).

⁹ TRMP, B.7.1.1.

¹⁰ TRMP, C.2.2.3 and C.2.2.4.

- 4.3 Policy 6 of the NPS-I is directed towards recognising and providing for Māori interests in relation to infrastructure, and emphasises engagement and involvement of tangata whenua in resource consent processes and where infrastructure may affect a site of significance to Māori.
- 4.4 Applying *R J Davidson*,¹¹ a competently prepared plan may remove the need for reference to Part 2 of the Act. The objectives and policies in the TRMP noted above demonstrate that the plan extensively incorporates matters relevant to tangata whenua, including a policy directly corresponding to s 6(e) (at (d) above). These objectives and policies are heavily directed toward consultation and involvement of tangata whenua in resource management processes.

The Applicant's engagement with tangata whenua and consideration of Māori land interests

- 4.5 The Applicant has extensively engaged with Te Aitanga a Māhaki during the development of the proposal. This is set out in the principal evidence of Mr Ruifrok at [8.1] and [8.6]. A consultation timeline is set out in the AEE,¹² noting the role of Te Aitanga a Māhaki in leading hui and updating on recovery work programmes. This evidence is not contested.
- 4.6 The Application noted that a cultural impact assessment (**CIA**) would be provided by Te Aitanga a Māhaki. This has not been provided: the completion of this was outside the control of the Applicant. An email of support was provided from Willie to Aho on 4 May 2026, stating "please proceed with this application with our support".
- 4.7 In the absence of a CIA from mana whenua, the application indicated expected effects on cultural values as follows:¹³
- (a) It is recognised that most natural waterways and the whenua will have cultural values associated with them as they contribute to the overall health and well-being of the wider environment;
 - (b) It is common for archaeological sites to be located near waterways;
 - (c) No known site of cultural significance, archaeological or heritage sites are known within the proposed works;
 - (d) Construction works will be limited and subject to the CEMP and ESCP and inclusive spill management plan, limiting adverse effects on the stream and freshwater habitat;
 - (e) An Archaeological Site Discovery Protocol would apply during the earthworks.
- 4.8 In the JWS, Mr Exeter and Ms Michalakakis agree that adverse cultural effects are acceptable and no further mitigation is required.

¹¹ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316.

¹² Assessment of Environmental Effects (**AEE**) at 126-127.

¹³ AEE at 58-59.

Relevant support for the proposal

- 4.9 Ahead of the hearing, Mr Te Aho made a submission “on behalf of” Te Aitanga a Māhaki Trust, Māhaki Tiaki Tangata, Turanga Leasing Limited and Toitu Tairāwhiti Builtsmart Limited. The submission was supportive of the resource consent.
- 4.10 The submission noted that Te Aitanga a Māhaki Trust had been directly involved in the proposal since March 2024.
- 4.11 On the morning he was due to make a submission in person at the hearing, Mr Te Aho withdrew the submission of Te Aitanga a Māhaki Trust via email, giving the following reasons:
- (a) “Our poor relationship with Tim Barry and the Gisborne District Council leadership”;
 - (b) The need for the concerns outlined by members of the Te Karaka Community to be heard and assessed on their merits.
- 4.12 The Applicant submits this should be accepted at face value: the withdrawal of the submission had nothing to do with the application itself or any specific submission on it.
- 4.13 Independently of Mr Te Aho, Ms Kohere-Smiller made a submission on behalf of Māhaki Tiaki Tangata in support of the application. Māhaki Tiaki Tangata is the iwi-led emergency response organisation in Te Karaka. The submission acknowledged the collaborative approach undertaken during the development of the proposal. Ms Kohere-Smiller remains in support of the application.
- 4.14 Mr Pikia also submitted in support of the proposal on behalf of Rangatira Marae, stating “Rangatira Marae in full support of the Te Karaka stopbank mahi”. Mr Ropitini further submitted, on behalf of the Rangatira Marae Trust, in support of the application.

Wi Pere Trust opposition

- 4.15 The evidence of Wi Pere Trust provides that the land impacted by the moving of the stopbank location is “part of the Trust’s papakainga and horticulture development strategy” and that the Applicant has failed to take this into account in its decision to proceed with the proposal rather than upgrading the existing stopbank.
- 4.16 The legal submission on behalf of Wi Pere Trust argues:
- ... the undermining of the Trust's intentions for development of its land for the benefit of whānau beneficiaries which is at stake, as caused by removing the protection of the existing stopbank, but this has not been evaluated or factored into the process to date.

This omission represents comprising a substantial failure to meet the Council's duties under s 6(e) of the RMA to the point where the proposed upgrade is submitted to be flawed as a matter of law, contrary to the sustainable management purpose of the RMA, and should not proceed as currently planned.

- 4.17 The submission of the Wi Pere Trust relies on direct reference to s 6(e) of the RMA. It draws an equivalence between the choice to undertake the proposal without specific attention to the papakainga and horticulture plans of Wi Pere Trust at their subject site, and a wholesale failure to meet the requirements of s 6(e).
- 4.18 The Applicant submits this does not reflect a proper approach to the assessment required. The TRMP contains extensive provisions related to Māori interests, such that compliance with the plan can be taken to be compliance with relevant provisions of Part 2 of the Act. The provisions of the TRMP are heavily directed towards consultation and engagement, and the Applicant has involved tangata whenua, including Wi Pere Trust, throughout the project. The Applicant's approach to the involvement of Māori is clearly consistent with the TRMP.
- 4.19 The Applicant has always recognised that there will be adverse effects to land that is less protected by the retreat of the stopbank location. This has been factored in to the options analysis and consultation on the proposal. It has always been the case that adverse effects on the Wi Pere Trust land have been acknowledged and considered.
- 4.20 Mr Ruifrok's supplementary evidence sets out a number of matters relevant to the Wi Pere Trust submission. In particular, it provides:¹⁴
- (a) In the options analysis, the "consentability" component incorporated the need to take into account Māori land interests, and a sensitivity analysis was undertaken to apply alternative weightings for the ranking system, with Option 3 consistently scoring strongly;
 - (b) The engagement the Applicant has had with the Wi Pere Trust in developing the proposal, including prior to the decision to proceed with the new stopbank location; and
 - (c) The Applicant has also applied for resource consent for an alternative option of the stopbank being routed around Wi Pere Trust land. The alternative alignment provides maximum autonomy for Wi Pere Trust to refuse to have the stopbank pass over their land.
- 4.21 In addition, the Applicant notes the following:
- (a) The existing stopbank is on Wi Pere Trust land, which should put in perspective the impact of retreating the new stopbank on Wi Pere Trust land;
 - (b) The existing stopbank does not entirely protect the Wi Pere Trust land;
 - (c) The preferred alignment of the proposal would continue to protect part of the Wi Pere Trust land;
 - (d) The land that would be protected by the new stopbank will be significantly better protected from flooding than the land protected by the existing stopbank; and

¹⁴ Supplementary statement of evidence of Joss Ruifrok at [3.1]-[5.8].

- (e) There are no present papakainga or horticulture activities on the Wi Pere Trust land, but the feasibility of papakainga would be improved by reducing flood risk to less than 1 in 50 years, in line with the requirements of the Building Act 2004.
- 4.22 The difference to the Wi Pere Trust land is therefore one of degree. The Applicant submits that it is incorrect for Wi Pere Trust to assert that the proposal “entirely fails the Trust's property and undermines the Trust's relationship as mana whenua with their ancestral land”.
- 4.23 The Applicant submits that, when considering a fair appraisal of the TMRP and NPS-I requirements for recognising Māori interests, the application has clearly discharged these duties.

Alternative alignment for Wi Pere Trust whenua

- 4.24 In the course of the hearing questions were raised about the necessity for the Alternative Alignment that is proposed in relation to the Wi Pere Trust whenua. In Mr Ruifrok's supplementary statement of evidence he noted:¹⁵

The Wi Pere Trust parcel is Whenua Māori registered with the Māori Land Court and to date discussions with Wi Pere Trust have provided some uncertain as to whether they would permit the stopbank to go directly across their whenua (as per the Preferred Alignment). GDC's power to utilise the PWA to obtain land access is constrained due to its status. Stopbank construction can only occur if land access permissions and/or easements are granted.

In response to Wi Pere Trusts position, the Alternative Alignment was included within the consent application to provide a viable option that avoids crossing the Wi Pere Trust land. The Alternative Alignment therefore provides flexibility to accommodate Wi Pere Trust's autonomy while still enabling the proposed stopbank upgrade to proceed and have a pathway to successfully deliver the flood protection benefits needed for to this community.

- 4.25 It remains the Applicant's strong preference that the resource consent provides for the Alternative Alignment. It is desirable in order to provide Wi Pere Trust with an alternate option where there is no need accommodate the footprint of the stopbank over Wi Pere Trust land, and necessary to ensure that the project is deliverable.

5 Effects on productive land

- 5.1 The main consequence of providing more flood protection to the township of Te Karaka is greater flood exposure for the rural land that will no longer be behind the stopbank. There are also some changes in potential flood patterns for other land that was already outside the existing stopbank's protection.
- 5.2 By and large, the trade-off for greater flood protection for the township is greater exposure for some rural land. In broad terms, this represents sound planning judgement, allocating risk away from the most sensitive residential

¹⁵ Supplementary statement of evidence of Joss Ruifrok at paras [5.2]-[5.3].

locations to less sensitive rural locations. When deciding the allocation of risk, priority should be given to keeping people safe over land.

- 5.3 Without losing sight of that context, the adverse effects on rural land need to be properly considered. Mr Wilson’s evidence on behalf of Mr and Ms Burgess, together with evidence from submitters such as Mr Newman, Mr McLanachan, Ms Wilson and Mr Coates, illustrated the potential impacts of increased exposure to flooding on the productive use of their land.
- 5.4 Some submitters criticised the Applicant for focussing its assessment of adverse effects on the potential impacts of the proposal on habitable dwellings, with less information regarding the potential effects on rural land and non-habitable structures. However, the independent hearing panel has before it:
- (a) the Consequential Flood Risk Assessment illustrating the difference the proposal is predicted to make to the land in question in terms of:
 - (i) flooding depth;¹⁶
 - (ii) flooding velocity;¹⁷ and
 - (iii) flood hazard classification.¹⁸
 - (b) The Te Karaka stopbank upgrade – Berm sediment accretion assessment;¹⁹
 - (c) A multi criteria analysis of shortlisted flood management options which included a score for “flood benefits” that factored in flood hazard impacts on productive land;²⁰
 - (d) An economic assessment of the effects of the proposal that included losses in rural production and damage to facilities;²¹
 - (e) Mr Wilson’s evidence (prepared at the Applicant’s cost);
 - (f) Evidence from the submitters such as Ms Burgess, Mr Newman, Mr McLanachan, Ms Wilson, Wi Pere Trust and Mr Coates.
- 5.5 The Applicant submits that the information before the Panel is adequate to understand the environmental effects that will result from retreating the stopbank, relative to its current position.
- 5.6 The Joint Witness Statement by Mr Exeter and Ms Michalakis explains the policy framework that applies to natural hazard mitigation and the protection of productive land. They consider that the proposal is not contrary to the National Policy Statement on Highly Productive Land (**NPS-HPL**) or the TRMP provisions on productive land.

¹⁶ Section 92 response, Appendix 5, Figures 12-16.

¹⁷ Section 92 response, Appendix 5, Figures 17-22.

¹⁸ AEE, Appendix 8, Figures 8-10.

¹⁹ Section 92 response, Appendix 3.

²⁰ AEE, Appendix 6, Table 8.1.

²¹ AEE, Appendix 16

5.7 The tension that could exist at national policy level between the improvement of flood protection works and the protection of productive land is expressly resolved by the National Policy Statement on Infrastructure (**NPS-I**) and NPS-HPL:

- (a) the NPS-I defines “additional infrastructure” as including “flood control and protection works carried out by, or on behalf of, a local authority”, and defines “infrastructure” as including that additional infrastructure;²²
- (b) NPS-I Policy 9 states that decision-makers “must enable .. major upgrades of existing infrastructure activities in all environments”, but “where infrastructure activities are proposed to locate in or are likely to have adverse effects on environments and values provided for in section 6 of the [RMA], the provisions of this policy must be read alongside other relevant national direction, regional policy statements and regional and district plans”. As productive land is not a s 6 matter, the NPS-I is not intended to be read “alongside” other policy, including the NPS-HPL. Instead, “the adverse effects of ... major upgrades must be, *where practicable*, avoided, remedied or mitigated”.
- (c) The NPS-HPL defines “specified infrastructure” as including “any public flood control, flood protection or drainage works carried out ... by or on behalf of a local authority”;
- (d) Echoing the NPS-HPL’s Policy 8, Implementation Method 3.9 states that territorial authorities “must avoid the inappropriate use or development of highly productive land that is not land-based primary production”. It then says that a use or development of highly productive land is inappropriate except for certain listed purposes, which includes “the maintenance, operation, upgrade, or expansion of specified infrastructure” (where there is a functional or operational need for it to be on highly productive land).

5.8 Therefore, under the NPS-HPL, Policy 8’s “avoid” directive does not apply because the upgrade of the stopbanks is not an inappropriate use or development. At the same time, NPS-I Policy 9 directs that the stopbank upgrade must be enabled, and that only s 6 matters are to be read “alongside” this policy, confirming that effects on highly productive land are a lower-tier priority.

5.9 It is submitted that the resolution of any tension between the NPSs regarding protection of highly productive land and upgrading flood protection is clearly resolved in favour of the latter. As per our opening submissions, this must colour the panel’s interpretation of the TRMP’s policy framework.

6 Adequacy of information regarding performance of proposed stopbanks

6.1 In the s 42A report and the evidence of Mr Westphal and Mr Craig, it was suggested that further information was required in related to the performance of the stopbanks, in particular:

²² National Policy Statement on Infrastructure (**NPS-I**), cl 1.4.

- (a) potential reliance on an outdated flood frequency analysis and peak discharge estimate;
 - (b) the effects of debris rafting at bridges;
 - (c) the effects of climate change; and
 - (d) the effects of future channel aggradation and berm accretion not being specifically incorporated within the adopted 0.6 m freeboard allowance.
- 6.2 Submitters also questioned the adequacy of the flood modelling, including:
- (a) Whether it reliably captured adverse effects on their land (this was a particular focus of the evidence of Mr Coates and Mr and Ms Burgess);
 - (b) Whether sedimentation effects were appropriately captured (this was a focus of the evidence of Mr McLanachan).
- 6.3 It was suggested that further hydrology evidence would be required to make a final determination on the effects of the proposal.
- 6.4 The Applicant submits that these matters do not require further hydrological assessment, or reconsideration of the proposed crest level, before the Panel can determine the application.
- 6.5 The Applicant accepts that flood frequency, climate change, debris blockage and future changes in channel morphology are relevant considerations to the proposal. The important distinction, however, is the purpose for which those matters are relevant. In the Applicant's submission, the hearing should not become an inquiry into the theoretically optimum level of flood protection that could be provided to Te Karaka. The relevant question is whether the Panel have sufficient information to understand and assess the actual and potential effects of the proposal that is before them.

Legal framework and scope of the consent decision

- 6.6 As noted in the Applicant's submissions filed prior to the hearing, to proceed the Panel must have information of adequate quality and sufficient detail to have a relevantly informed understanding of the effects of the proposal.²³
- 6.7 The Applicant also submits that the adequacy of information for this proposal must be viewed in light of the National Policy Statement on Natural Hazards (**NPS-NH**), which states that:
- (a) decision-makers "must consider the scale and detail of information necessary to assess the risk by having regard to the anticipated level of risk";²⁴ and;
 - (b) decisions should be made with the "best available" information, and when "information is uncertain or incomplete, decision-makers must continue to undertake risk assessments and make decisions using the

²³ *Gabler v Queenstown Lakes District Council* [2017] NZHC 2086 at [65].

²⁴ National Policy Statement on Natural Hazards (**NPS-NH**), cl 3.3(1), see also Policy 2.

best available information and not delay making decisions solely because of uncertainty about the quality or quantity of the information available”.²⁵

- 6.8 Section 104(1)(a) of the Resource Management Act 1991 requires the consent authority to have regard to the actual and potential effects on the environment of allowing the activity. Section 104(1)(c) additionally enables consideration of other matters that are relevant and reasonably necessary to determine the application.
- 6.9 There is no statutory requirement identified in the evidence requiring an urban stopbank to provide protection against a particular annual exceedance probability or return-period event. The selection of a level of service is necessarily informed by engineering judgement, residual risk, practicability, cost and the benefits able to be achieved by the particular scheme.
- 6.10 Hydrological and hydraulic assumptions are therefore relevant to this consent insofar as they affect the Panel’s understanding of the effects of the proposed works. That does not mean that the Panel are required to consider other hypothetical scenarios and designs. In particular, the Panel are not required to determine the optimum long-term level of service for the scheme, or that the existence of an alternative or more conservative design standard establishes that the proposal before them is unacceptable.
- 6.11 That distinction is consistent with Commissioner Hill’s opening observation that this hearing is not about whether another scheme would be better. There will inevitably be alternative stopbank alignments, crest levels, freeboard allowances and design events that could provide different levels of protection. The issue for determination remains the effects and acceptability of the proposal actually before the Panel.

The evidence before the Panel provides a clearly adequate foundation to understand the effects of the proposal

- 6.12 The Panel has a substantial amount of evidence before it regarding the flooding effects of the proposal, including:
 - (a) The Consequential Flood Risk Assessment provided with the application;
 - (b) The Geomorphic Assessment prepared by Tonkin + Taylor and provided in response to the s 92 request;
 - (c) The letter from Tonkin + Taylor dated 16 December 2025 regarding the Berm sediment accretion assessment, provided in response to the s 92 request;
 - (d) The Hydraulic Modelling Report prepared by DHI and provided in response to the s 92 request;
 - (e) The flood modelling maps prepared by Tonkin + Taylor and provided in response to the s 92 request;

²⁵ NPS-NH, Policy 5 and Implementation 3.4.

- (f) Direct responses to questions in the s 92 request;
 - (g) The principal evidence of Mr Hooker (including letters from Oz Ben-Ezra and Ian Fuller) and Mr Foote;
 - (h) The rebuttal evidence of Mr Hooker and Mr Foote (including memorandum of Greg Whyte); and
 - (i) The supplementary evidence of Mr Ruifrok.
- 6.13 The evidence of Mr Hooker provides a summary of the nature of flood modelling and how it was applied in this case. He notes that the approach is well-established and widely used in flood management investigations and design.²⁶ This is not seriously disputed by any other witnesses or submitters, and Ramon Strong notes that “the methodology and general approach appear satisfactory”.²⁷
- 6.14 The DHI flood model evaluated ‘pre-upgrade’ and ‘post-upgrade’ cases across three scenarios: a Cyclone Gabrielle-sized event, a design event modelled on a 1% AEP event under present day climate (as at 2017), and an over-design event.
- 6.15 These modelling scenarios clearly demonstrate the effects of the proposal. In particular, the Panel is able to observe the significant positive effects in relation to the area inside the protection of the stopbanks, and observe the adverse effects on the land outside the stopbanks (and impacted assets such as the Rangatira Road and Kanakanaia Road Bridges).
- 6.16 These effects are summarised in Mr Hooker’s evidence at [9.7]-[9.25]. Again, this is not seriously in dispute, with the criticism of the modelling regarding the precision and extent to which these effects can be assessed. The Applicant submits that these criticisms do not go to the heart of the matter such that the Panel is not adequately informed in sufficient detail about the effects of the proposal.

Context for level of service

- 6.17 By way of context only, Clause E1.3.2 of the New Zealand Building Code provides that surface water resulting from an event having a 2% annual probability of occurrence, approximately a 50-year ARI event, shall not enter housing and specified other buildings.
- 6.18 The Applicant does not rely on the Building Code as prescribing an appropriate level of service for the Te Karaka stopbank. It does not do so. It does, however, illustrate the broader point that New Zealand’s regulatory framework does not establish a universal 1% AEP flood-protection standard applicable in every circumstance.
- 6.19 Similarly, flood protection schemes throughout New Zealand provide differing levels of service reflecting their particular circumstances. The existence of schemes designed to either higher or lower standards does not determine the appropriate standard for Te Karaka.

²⁶ Statement of Evidence of Mark Hooker at [7.2].

²⁷ Statement of Evidence of Ramon Strong at [18].

- 6.20 The proposed Te Karaka upgrade represents a substantial improvement over the existing situation. The scheme will provide significantly increased flood protection to more than 179 residential properties and a community of more than 500 people. The modelling demonstrates that, without the upgrade, flooding through the township during the adopted design event would be extensive and severe.
- 6.21 The selection of a higher design standard is also not without consequence. Increasing the design event or making additional allowances for multiple uncertain future scenarios would ultimately require consideration of increased crest levels, footprints, quantities of fill, property effects and cost. The appropriate level of service is therefore a broader infrastructure and risk-management decision rather than simply a question of whether a larger design event can be modelled.

Basis for the 5,625 m³/s design event

- 6.22 The recently completed Waipaoa River Flood Control Scheme downstream of Te Karaka was designed using the same 5,625 m³/s event and at the same location (Kanakanaia Bridge) and a 0.6 m freeboard allowance.²⁸ The Te Karaka scheme is located on the same river system.
- 6.23 A consistent design event was deliberately adopted for Te Karaka. This provides an equitable level of service between Te Karaka and the downstream Waipaoa River Flood Control Scheme and avoids designing the two interconnected schemes on fundamentally inconsistent assumptions and potentially combative levels of service.²⁹
- 6.24 The 5,625 m³/s discharge was originally derived in 2017 as representing a 1% AEP event incorporating an allowance for climate change factors out to 2090. Since that time, and importantly following Cyclone Gabrielle, further flood frequency analysis has been undertaken for the Te Karaka project.
- 6.25 As explained in the supplementary technical evidence, the post-Gabrielle analysis indicates that 5,625 m³/s can reasonably be treated as approximately a contemporary 1% AEP event without a separate future climate-change allowance.³⁰ The effect of the additional flood record is therefore principally to change the statistical estimated return period associated with the adopted discharge; it does not mean that the discharge itself has ceased to provide a rational design and assessment basis.
- 6.26 Flood frequency analysis is inherently statistical and will always contain uncertainty. The addition of further flood records after a severe weather event or adoption of different statistical distributions will change the estimated return period associated with a particular discharge. Further analysis cannot remove that inherent uncertainty.
- 6.27 The relevant issue is therefore not whether a single definitive return period can be assigned to 5,625 m³/s. It is whether the adopted event provides a

²⁸ Application at 34.

²⁹ Application at 34.

³⁰ Letter of Oz Ben-Ezra, attached to statement of evidence of Mark Hooker.

sufficiently robust basis for design and, importantly for this consent process, for assessing the effects of the proposed works.

- 6.28 The Applicant submits that it does. The adopted event has an established engineering basis, is consistent with the downstream Waipaoa River Flood Control Scheme, has been reconsidered following Cyclone Gabrielle, and has been used within hydraulic modelling that has itself been tested against observed flood behaviour.

Debris rafting

- 6.29 The potential effects of debris at the bridges were addressed in Mr Foote's rebuttal evidence and do not provide a basis for requiring further hydrological assessment.
- 6.30 The Kanakanaia and Rangatira Road bridges are specifically represented within the hydraulic model. Cyclone Gabrielle also provides an important empirical event against which model behaviour and the performance of those structures could be considered.
- 6.31 No significant debris raft was observed at either bridge during Cyclone Gabrielle. The evidence identifies the height and span of the bridges and the availability of significant flow bypass relief as relevant factors in that regard.
- 6.32 The Applicant therefore does not suggest that debris blockage is physically impossible. Rather, the potential for debris has been considered in the modelling evidence and review process, and there is no evidence before the Panel demonstrating that adopting an alternative debris assumption would materially change the assessment of the effects caused by the proposed stopbank.

Climate change, aggradation and accretion

- 6.33 The Applicant similarly accepts that climate change and future changes in riverbed and berm levels may affect the level of service provided by the scheme over time.
- 6.34 The Applicant does not contend that the proposed stopbank will provide an immutable level of protection irrespective of future changes within the Waipaoa catchment. Climate, hydrology, flood frequency, land use and river morphology will continue to change, and the actual level of service provided by the scheme may also change over its operating life.
- 6.35 That does not, however, establish that every possible future change must be converted into an additional allowance in the stopbank height before consent can be granted.
- 6.36 Further, for the following reasons, the minimum freeboard condition³¹ Ms Michalikis proposes in the JWS is inappropriate:

³¹ Condition 87.

- (a) It simply is not possible for the stopbank to be raised periodically for the sake of maintaining freeboard;
 - (b) Depending on future aggradation and accretion it may become impossible for the stopbank to comply with what is actually an arbitrary standard;
 - (c) If the stopbank were to be raised, the footprint of the stopbank would also have to be widened, and the Applicant would have to acquire the necessary land interests before that could be done;
 - (d) Every time the stopbank is raised, the road will also have to be raised in multiple locations, which would require involvement from NZTA;
 - (e) Raising the stopbank would have consequential flooding effects that have not been modelled or considered through this process;
 - (f) A separate resource consent process may be necessary each time the stopbank height is increased;
 - (g) There is no guarantee of funding for further acquisition of land or construction of the public work.
- 6.37 Future riverbed aggradation and berm accretion are inherently uncertain in their magnitude, timing and spatial distribution. The Applicant considers that changes in actual bed and berm levels are more appropriately addressed through ongoing routine monitoring of the river system and continued asset inspections and assessments of scheme performance than through attempting to predict and incorporate every possible sedimentation scenario into the present crest level.
- 6.38 The same distinction applies to climate change. The adopted 5,625 m³/s discharge already represents a substantial flood event and, on the post-Gabrielle analysis, approximately represents a contemporary 1% AEP event. Future climate change may alter the statistical return period associated with that discharge. That primarily affects the future frequency with which the design capacity of the scheme may be approached or exceeded; it does not of itself demonstrate an unassessed adverse effect caused by construction of the proposed stopbank.
- 6.39 There is an important distinction in this respect between scheme performance and effects of the activity. The question of how frequently the stopbank might be overtopped in the future concerns the level of protection afforded to Te Karaka. The RMA effects question is whether construction and operation of the proposed stopbank causes adverse effects on the surrounding environment that have not been adequately identified or assessed.
- 6.40 The existence of uncertainty as to future scheme performance does not establish that the Applicant's assessment of environmental effects is inadequate.

Assessment of effects

- 6.41 This distinction is particularly important because much of the flood hazard discussed during the hearing exists independently of the proposed works.
- 6.42 The wider Te Karaka floodplain is already subject to significant flooding. Existing flood depths, velocities and flood hazard on land outside the proposed protected area are not new effects created by the stopbank upgrade.
- 6.43 The relevant assessment therefore compares the modelled hydraulic conditions without the proposed works, against those with the proposed works. It is the incremental change attributable to the proposal that identifies the relevant hydraulic effect of the activity.
- 6.44 Mr Coates questioned the validity of the hydraulic modelling by reference to a discrepancy between the timing of modelled and observed flood levels at his property for the Cyclone Gabrielle sized event. As addressed in the technical evidence, hydraulic modelling necessarily contains uncertainty and is not expected to reproduce every observed flood level at every individual location precisely.
- 6.45 More importantly, the assessment of effects does not depend upon treating either the pre-development or post-development model as a perfect prediction of flood behaviour. The purpose of the comparative modelling is to identify the change in flood behaviour attributable to construction of the proposed works.
- 6.46 Assumptions concerning peak discharge, climate change, debris or channel morphology may alter absolute flood levels in both the existing and proposed scenarios. The material question for this consent is whether reasonable alternative assumptions would reveal a materially different incremental effect caused by the proposed works.
- 6.47 On the evidence before the Panel, there is no demonstrated basis for concluding that further flood frequency analysis, or the adoption of additional allowances in the stopbank crest level, would materially alter the understanding of the effects caused by the proposed stopbank.
- 6.48 Put another way, simply identifying that a larger flood could occur, that the climate will change, that sedimentation may arise, or that debris blockage is possible does not, on its own, demonstrate an inadequacy in the effects assessment. To establish such an inadequacy, there would need to be a sufficient evidential basis to conclude that those matters are likely to produce a materially different effect from the proposed activity - one that the Panel does not already understand.

River velocity and sedimentation

- 6.49 In his submission, Mr McLanachan raised concerns around the relative velocity of the river under the new stopbank, and pointed to locations that in his view would be subject to greater sedimentation under the proposal.
- 6.50 Changes in velocity in the design event have been addressed in:

- (a) The Consequential Flood Risk Assessment;³²
 - (b) The Geomorphic Assessment prepared by Tonkin + Taylor, which assessed the velocities of Options 1 and 4 compared to the pre-upgrade scenario;³³ and
 - (c) The letter of Tonkin + Taylor regarding the Berm sediment accretion assessment.³⁴
- 6.51 This information is also summarised in the letter of Mr Fuller appended to the statement of evidence of Mr Hooker.
- 6.52 It is notable that the CFRA indicates increased velocity in the plain outside the river in the post-upgrade case as compared to the pre-upgrade case. This modelling covers the locations of concern to Mr McLanachan.
- 6.53 It is also notable that the changes in velocity under Option 1 indicated in the Geomorphic Assessment demonstrate that under that change, in some locations velocity of the river would decrease as well as increasing elsewhere. It would not be appropriate to single out changes in velocity (with corresponding changes in aggradation and accretion) in a single location for the purposes of assessing effects of different options.

Further assessment and conditions

- 6.54 The Applicant therefore does not consider that determination of the consent should be deferred pending further hydrological assessment or redesign of the scheme.
- 6.55 There will continue to be matters appropriately addressed through detailed design, ongoing asset management, inspections, bed-level surveys and monitoring of the river system. Those Council processes should not be confused with information that is reasonably necessary to determine the environmental effects of the resource consent application.
- 6.56 To the extent that the Panel considers ongoing monitoring necessary to address an identified effect of the activity, that can be considered through appropriately confined consent conditions. Any such condition should, consistently with section 108AA of the RMA, remain directly connected to an adverse effect of the activity or another statutory basis for the condition, rather than becoming a mechanism for reopening the Applicant's broader level-of-service decision.

Application can be determined

- 6.57 The Applicant accepts that hydrology contains uncertainty and that the performance of the Te Karaka scheme will change over time as the river and

³² Tonkin +Taylor, Consequential Flood Risk Assessment, 2 April 2026 (attached as Appendix 8 to Application) at 12

³³ Tonkin + Taylor, High Level Geomorphic Assessment, 17 September 2025 (attached as Appendix 2 to s 92 response) at [4.1.2]-[4.1.3].

³⁴ Tonkin + Taylor, Letter "Te Karaka stopbank upgrade – Berm sediment accretion assessment", 16 December 2025 (attached as Appendix 3 to s 92 response).

climate change. Those matters do not prevent the Panel from determining this application.

- 6.58 The 5,625 m³/s design event has a clear rational and established technical basis. It is consistent with the downstream Waipaoa River Flood Control Scheme, has been reconsidered following Cyclone Gabrielle, and has been applied through hydraulic modelling that provides the Panel with a basis to understand the change in flood behaviour caused by the proposed works.
- 6.59 The question before the Panel is not whether a different scheme, higher / lower stopbank or more conservative design standard could be adopted. Nor is it necessary to establish a single immutable return period for the adopted discharge as statistics change. The relevant question is whether the effects of the proposal before the Panel have been adequately identified and can be appropriately managed.
- 6.60 The Applicant submits that they have. Further hydrological investigation directed principally at refining the future level of service would not materially assist determination of the effects of the activity and should not delay the granting of consent.

7 Adjournment of the hearing is inappropriate

- 7.1 Wi Pere Trust suggested in their oral submission that the hearing could be adjourned to allow for further negotiations to come up with a better solution regarding their land. Submissions for Mr and Ms Burgess also cited the *Mt Messenger* case, noting in that case the Environment Court did not finalise its determination until agreements with an affected landowner were completed.³⁵

The PWA, the RMA and the circularity problem

- 7.2 In our opening submissions, we emphasised that this process should remain focused on RMA issues directly relevant to the resource consent application, with PWA matters addressed through the statutory processes set out under the PWA. Broadly, this means the assessment should centre on the environmental effects of the proposal, both positive and adverse, evaluated within the relevant planning context.
- 7.3 In the RMA context, mitigation of adverse effects could include:
- (a) alignment and design choices that have reduced adverse effects;³⁶
 - (b) physical interventions to lessen flood risk, such as house relocation, raising or waterproofing;
 - (c) management measures to lessen risks, such as evacuation plans; and

³⁵ *Director General of Conservation v New Zealand Transport Agency* [2019] NZEnvC 203.

³⁶ NPS-I, Policy 7(1).

- (d) internalisation of adverse effects, in those cases where the Applicant has committed to acquiring properties outright.³⁷

7.4 The realignment of the stopbank will have adverse effects on some land, most notably the rural land from which the stopbank is retreating, but also some other land that is exposed to the river during events that would have overtopped the existing stopbank. The extent to which the qualities of that land are diminished (whether in environmental, social, economic, or cultural terms), is an RMA effect, taking into account both likelihood and severity.

7.5 The financial impacts of those effects on particular landowners are a matter of compensation for the PWA to address. As the Land Valuation Tribunal said in *Taylor v Minister for Land Information*:³⁸

The Public Works Act 1981 provides for the taking of land from private owners for public purposes, and s 60(1) provides that the owner is entitled to "full compensation". The meaning of the term "full compensation" was decided as long ago as 1898, in *Russell v Minister of Land* (1898) 17 NZLR 241 (SC) 253. It means payment of such money as will place the affected owner in a position as similar as possible to that which the owner was in before the land was taken.

7.6 Under s 60 of the PWA "full compensation" is due whether land is acquired,³⁹ suffers any injurious affection from the acquisition of other land,⁴⁰ or suffers any damage from the exercise of any statutory power under the PWA or which relates to a public work.⁴¹

7.7 As set out in our opening submissions, the Panel should adopt a "real world" approach and proceed on the basis that the PWA will apply and that compensation will be provided where it is due. It is not for the Panel, nor for resource consent conditions, to determine whether compensation is payable or in what amount. Doing so would exceed the RMA's jurisdiction and predetermine matters that are properly to be resolved through the PWA processes.

7.8 During the hearing, the question arose of whether the Applicant should have secured PWA agreements with the affected landowners before attempting to secure resource consents for the proposal. Certainly it would have been beneficial from the perspective of this process, as written approvals from the landowners would have meant that any adverse effects on their land would be removed from consideration.⁴²

7.9 However, until the Applicant obtains resource consent, it cannot be sure that it will be granted, or on what conditions. From the PWA perspective, it is preferable to have certainty about the public work before securing legal

³⁷ These properties are TK07 are TK08. TK06, TK09, TK23 and TK32 are already in ownership of Council or the Crown. Additionally, it is intended that TK15 will be acquired at the landowners' request, subject to confirmation of alienation by the Māori Land Court.

³⁸ *Taylor v Minister for Land Information* LVT-05-13, at [9].

³⁹ Public Works Act (PWA), s 60(1)(a).

⁴⁰ PWA, s 60(1)(b).

⁴¹ PWA, s 60(1)(c).

⁴² RMA, s 104(3)(a)(ii).

interests in land or compensating anyone for injurious affection or other damages.

- 7.10 As Commissioner Hill noted, there is a circularity problem: the RMA process is hampered by not having the PWA process resolved, but at the same time the PWA process would be risky without having the necessary RMA approvals in hand. This conundrum is not unusual in public works projects, and it is not necessary to adjourn the RMA process to await the outcome of the PWA processes. While this was done in the *Mt Messenger* case, the Environment Court was faced with relatively singular facts in that case, and it should be distinguished, as discussed below.
- 7.11 Should the resource consent be granted, the Applicant will then be in a position to proceed with certainty: securing the necessary legal interests in the required land, identifying land subject to injurious affection, and paying compensation in accordance with the provisions of the PWA.

Adjournment is not justified

- 7.12 Section 21 of the RMA requires that every person who exercises or carries out functions, powers, or duties under the RMA shall do so as promptly as is reasonable in the circumstances. The presumption is therefore that an adjournment is undesirable and there must be good reason for delay.
- 7.13 The proposal is for a public work that will, if resource consent is granted, protect the Te Karaka township from significant flood risks. There is significant value in a decision being made to confirm if this protection will be available to Te Karaka township and to allow for construction to commence before another severe weather event occurs. As noted in the principal evidence of Mr Ruifrok, project delivery is subject to a range of funding obligations and constraints, including maintaining agreed Crown and Council funding proportions, achieving required cost-benefit outcomes and complying with conditions attached to funding reallocations within the wider Flood Resilience programme.⁴³
- 7.14 Wi Pere Trust's submission reflects that they are opposed to the application due to their preference for the existing stopbank to be upgraded, rather than retreated. A delay in finally determining the application would not resolve this objection: such a change would require an entirely new resource consent application. The Applicant has already put forward an alternative alignment to avoid the Wi Pere Trust land if necessary. Delaying the hearing to allow negotiations between Wi Pere Trust and the Applicant would therefore not be for any clear purpose, with no assurance of resolution.
- 7.15 As noted above, compensation processes under the PWA operate separately to the resource consent process and will continue to proceed if the consent is granted. Granting resource consent will not take away the obligations on the Applicant to compensate for land acquired or injuriously affected by the works.
- 7.16 The Applicant has also already submitted that compensation under the PWA addresses different issues than environmental effects under the RMA. The Panel are adequately informed about the environmental effects and can proceed to make a determination about them.

⁴³ Statement of evidence of Joss Ruifrok at [7.8].

- 7.17 Submissions for Mr and Ms Burgess argue that there is uncertainty as to the extent of adverse effects on their land, and that following *Mt Messenger* the hearing should be adjourned to enable further assessment of these adverse effects.
- 7.18 The *Mt Messenger* case involved a very different situation. In that case, the applicant, New Zealand Transport Agency had provided an assurance it would not compulsorily acquire land belonging to Te Rūnanga o Ngāti Tama (**TRONT**).⁴⁴ Given that, the PWA did not apply and NZTA was engaging in trying to reach agreement with TRONT over further mitigation. TRONT had not finalised its position on the application pending agreement on further mitigation; and accordingly the Environment Court could not finally determine the cultural effects of the proposal.⁴⁵ There is not the same degree of uncertainty in this case. In particular, the Applicant is expressly engaging in the PWA process to secure the necessary legal interests in the required land, identify land subject to injurious affection, and pay compensation accordingly.
- 7.19 Accordingly, there is no justification to set aside s 21 and delay determination of the application.

8 The relevance of Option 1

- 8.1 It is notable that, with the exception of Ms Moran, all of the submitters who appeared before the Panel indicated that they support greater flood protection for Te Karaka Township.
- 8.2 The submitters on the northern side of Te Karaka have generally indicated that their preference would have been for the Applicant to raise the existing stopbank, referred to as Option 1 in the multi-criteria analysis. This is understandable because the proposed retreat means that less of their property will be inside the protection of the proposed stopbanks than is protected by the existing stopbanks.
- 8.3 The background to and reasoning behind the decision to proceed with the proposal rather than upgrading the existing stopbank is provided in the supplementary evidence of Mr Ruifrok. This is in addition to the Stopbank Alignment Options Assessment appended to the Application and the rebuttal evidence of Mr Hooker, which also addressed this decision. The position of the Applicant's expert witnesses is that the proposal is a preferable approach to Option 1, and garnered significant community support through the optioneering and engagement process.
- 8.4 Importantly, Option 1 would exacerbate the bottleneck that the existing alignment creates, resulting in increased flooding of upstream land. It would simply shift the impact from the productive land on the north side of the township to the productive land upstream, for example the Coates' land. As Mr Ruifrok's evidence describes, it would also put more strain on the bridges; exacerbate the risks both of, and from, stopbank failure; and leave the community with fewer options and less time for future adaptation.

⁴⁴ *Director General of Conservation v New Zealand Transport Agency* [2019] NZEnvC 203 at [240]-[241].

⁴⁵ At [241]-[242], [412] and [470].

- 8.5 The Applicant additionally submits that Option 1 is of limited relevance to the decision whether or not to grant the resource consent. That decision relates to whether the proposal as presented should be approved or declined, based on the application of the relevant provisions of the RMA, national instruments and the TRMP. As the Panel observed during the hearing, it cannot approve any alternative alignment through this resource consent process. The same applies to the managed retreat for which Ms Moran advocated.
- 8.6 As noted in our legal submissions filed ahead of the hearing, consideration of alternatives has some relevance to the application of s 104.⁴⁶ Those legal submissions set out the process that established the proposal as the best practical alternative for responding to flood hazard risk in Te Karaka, and the only practical alternative for ensuring certain positive effects, such as the protection of non-residential assets. The supplementary evidence of Mr Ruifrok further supports that submission.

9 Conclusion

- 9.1 The Applicant maintains that the proposal will have very significant benefits for the Te Karaka community. There are acknowledged adverse effects of the proposal, but these are not of the nature to render the proposal inconsistent with the relevant planning framework. In the JWS, Mr Exeter and Ms Michalakis are agreed that the resource consent application can be granted.
- 9.2 The information before the Panel is substantial and provides detailed information regarding the predicted effects of the proposal. While there are some variables such as aggradation, climate change and river debris, these do not alter the relative benefit of upgrading the stopbanks as opposed to the current state.
- 9.3 This application has come at the conclusion of extensive consultation with the Te Karaka community, affected landowners and tangata whenua. Multiple options have been considered and assessed. Bearing in mind that the Panel's role is not to determine the best possible solution to flood risks in Te Karaka, but to assess the proposal before it. This project will have substantial positive effects and is consistent with a national planning framework that is enabling of upgrading flood protection infrastructure.

Date: 9 October 2026



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B Watts | A Dawson
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⁴⁶ Legal Submissions on behalf of Gisborne District Council, 25 September 2026 at [5.1]-[5.7].