

**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

Memorandum on behalf of Applicant

25 September 2026

MC.

B Watts | A Dawson
PO Box 90750, Victoria Street West, Auckland 1142
DX CP24063
T: +64 9 336 7500
Brandon.Watts@mc.co.nz | Alec.Dawson@mc.co.nz

Memorandum on behalf of Applicant

- 1 This application is scheduled for hearing on 26-28 September 2026 before an independent hearing panel consisting of three hearing commissioners.
- 2 One of the three hearing commissioners is Joshua Wharehinga. Yesterday it came to the Applicant's attention that Commissioner Wharehinga's mother is Maraea Cookson, who has made a submission against the proposal on behalf of the Kewa/Katipa/Cookson whānau, alleging that it negatively impacts her whānau's land at 81 Kanakanaia Rd/Te Karaka 16A. This relationship has now been confirmed in Direction #4 from the independent hearing panel.
- 3 For the reasons set out below, the Applicant considers that this information discloses a significant conflict of interest, and therefore requests that Commissioner Wharehinga recuses himself from the decision-making process.
- 4 The conflict of interest is significant because there is a close family relationship between Commissioner Wharehinga and someone sufficiently interested in the proposal to lodge a submission opposing it, and because of the potential for Commissioner Wharehinga to benefit from a decision relating to land in which he may have a beneficial interest.
- 5 The legal test for whether bias (actual or apparent) means that a decision-maker should recuse themselves is: whether a fair-minded lay observer would reasonably apprehend that the decision-maker might not bring an impartial mind to the resolution of the case (*Royal Forest and Bird Protection Society of New Zealand Inc v Canterbury Regional Council* [2012] NZEnvC 244). The Applicant submits that the conflict of interest that has been identified meets this threshold.
- 6 Accordingly, if Commissioner Wharehinga participates in the decision-making process the outcome may be vulnerable to legal challenge. It may also undermine public confidence in the integrity of the resource consent process. Given the community-wide significance of this application, it is important that the decision-making process is both fair, and seen to be fair.
- 7 Direction #4 from the independent hearing panel proposes managing the conflict of interest by making the conflict known, and guaranteeing that Commissioner Wharehinga will not hear the presentation of the Kewa/Katipa/Cookson whānau submission or participate in any deliberations specifically concerning that submission.
- 8 While these are pragmatic proposals, Commissioner Wharehinga would still be in the position of making a decision about an application that is opposed by a close family member and affects land in which he may have a beneficial interest. It is not possible to neatly disconnect the issues relating to the Kewa/Katipa/Cookson whānau's land from the wider issues that will have to be decided. The Applicant therefore requests that Commissioner Wharehinga recuses himself from the decision-making process.
- 9 It is likely to be impractical to appoint a replacement hearing commissioner at this stage and expect them to be up to speed with all of the relevant material by the time the hearing commences on Monday. Therefore the Applicant requests

that the remaining two members of the independent hearing panel proceed to hear the application as scheduled. The Council may wish to consider delegating the Chair a deciding vote in the event that the independent hearing panel is split.

Date: 25 September 2026

A handwritten signature in blue ink, appearing to read 'B Watts | A Dawson', with a horizontal dotted line underneath.

B Watts | A Dawson
Counsel for the Applicant