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

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

25 September 2026

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1 Introduction

1.1 In February 2023, Cyclone Gabrielle caused widespread damage across the Gisborne region. Among the communities most severely affected was Te Karaka, a township of approximately 600 residents located adjacent to the Waipaoa River.

1.2 Te Karaka is currently protected by approximately 4.2 km of stopbanks, which were raised following Cyclone Bola in 1988. During Cyclone Gabrielle, the Waipaoa River overtopped those stopbanks, resulting in extensive flooding throughout the township.

1.3 This application seeks resource consent for flood resilience and stopbank improvement works within and adjacent to the Waipaoa River (**proposal**). The purpose of the proposal is to reduce the existing and future flood risk faced by the Te Karaka community.

1.4 The proposed Te Karaka Flood Resilience Improvements project will provide increased flood protection for approximately 200 properties, including residential dwellings, commercial premises, and Te Karaka Area School. This will primarily be achieved by retreating the existing stopbanks, thereby restoring a wider floodplain, and increasing their height.

1.5 Any proposal to create or change stopbanks has consequences, as the water diverted by the stopbanks has to go somewhere else. A range of options have been considered and discussed through community engagement. The applicant considers that the proposal represents the optimal outcome overall, acknowledging that greater protection of Te Karaka township means some of the farmland and structures in the floodplain will be exposed to increased flooding.

1.6 The purpose of this hearing is determine whether the proposal should be granted resource consent under the Resource Management Act 1991 (**RMA**), and if so on what conditions. The RMA is planning legislation, the purpose of which is to promote the sustainable management of natural and physical resources. The decision has to be made in that context and for that purpose.

1.7 Separate statutory processes exist under the Public Works Act 1981 (**PWA**) to compensate people for the financial impact of public works affecting their land. One of the challenges we face in this process is to stay focussed on the RMA questions, and leave the PWA questions to the PWA process. This is a topic on which our submissions will try to provide you with useful guidance.

1.8 Our submissions cover the following topics, which reflect the major issues arising from the application, the planning report prepared under s 42 of the RMA, and the submissions filed on the application:

(a) The evidence to be presented by Gisborne District Council (**GDC**) as applicant at the hearing;

(b) The overarching legal framework guiding the Commissioners' decision;

(c) The proper approach to the effects assessment given the applicable provisions of the Tairāwhiti Resource Management Plan (**TRMP**) and relevant national instruments;

(d) The proper approach to the assessment of alternatives;

(e) The relevance of the Public Works Act 1981 (**PWA**);

(f) The proper approach to "over-design" events within the flooding evidence;

(g) The proper approach to the available information regarding flooding evidence, in particular regarding the effects on the Rangatira Road and Kanakanaia Road Bridges.

2 Gisborne District Council's evidence

2.1 You will have the opportunity to hear from:

(a) Joss Ruifrok (Regional River Manager at GDC);

(b) Dean Foote (Project Management Engineer at GDC);

(c) Mark Hooker (Principal Water Engineer at Tonkin + Taylor);

(d) Andrew Hicks (Principal Ecologist at Stradegy Planning Ltd);

(e) Braydon Narbey (Architect at WSP);[1]

(f) Glen Randall (Transport Engineer at WSP);

(g) Jamie Exeter (Acoustics Consultant at Styles Group);

(h) Sven Exeter (Senior Associate Planner at Stradegy Planning Ltd).

2.2 The statements of evidence that have been filed accompany the expert reports that were provided with the Assessment of Environmental Effects.

3 Legal framework

3.1 The proposal comprises a bundled discretionary activity and a separate concurrent non-complying activity associated with the proposed culvert flap gates.

3.2 In relation to the bundled discretionary activity, under s 104 the decision-maker must, subject to Part 2 of the RMA, have regard to:

(a) any actual and potential effects on the environment of allowing the activity, including positive effects;

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1 Appearing in place of Stefan Steyn who provided the statement of evidence and expert report on landscape and visual effects.

(b) any relevant provisions of the relevant planning framework, which includes:

(i) the Tairāwhiti Resource Management Plan (**TRMP**);

(ii) National Policy Statement for Natural Hazards 2025 (**NPS-NH**);

(iii) National Policy Statement for Infrastructure 2025 (**NPS-I**);

(iv) National Policy Statement for Highly Productive Land 2022 (**NPS-HPL**);

(v) National Environmental Standards for Freshwater (**NES-FW**); and

(vi) the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (**NES-CS**).

3.3 Whether or not reference to Part 2 is appropriate, following an assessment under s 104, is guided by the Court of Appeal's decision in *RJ Davidson Family Trust v Marlborough District Council* (***Davidson***).[2]

3.4 District and Regional Plans are required to give effect to national policy statements.[3] The Supreme Court in *East-West Link* held that lower order plans must be construed as having that result if at all possible.[4] An important feature of the planning context is that while the TRMP remains the operative planning instrument, several higher-order planning documents directly relevant to this application, particularly the NPS-NH and NPS-I, post-date the operative provisions of the TRMP and have not yet been fully incorporated into its planning framework. As the TRMP has not comprehensively incorporated these instruments, following *Davidson* and *East-West Link*, direct reference to them will be necessary in determining the application. A full evaluation of the objectives and policies relevant to the effects assessment is set out below in Part 4 of these submissions.

3.5 The proposal also includes dewatering discharge consents. Although groundwater was not encountered during the geotechnical investigations and dewatering is not expected to be required, those applications remain before the Commissioners. Accordingly, ss 105 and 107 of the Act are also engaged. In addition to the matters set out in s 104, the Commissioners must have regard to:

(a) The nature of the discharge and the sensitivity to the receiving environment;

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2 *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, at [75]: "If a plan that has been competently prepared under the Act it may be that in many cases the consent authority will feel assured in taking the view that there is no need to refer to pt 2 because doing so would not add anything to the evaluative exercise. Absent such assurance, or if in doubt, it will be appropriate and necessary to do so. That is the implication of the words "subject to Part 2" in s 104(1), the statement of the Act's purpose in s 5, and the mandatory, albeit general, language of ss 6, 7 and 8."

3 RMA, ss 67(3)(a) and 75(3)(a).

4 *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26, [2024] 1 NZLR 241 (***East-West Link***) at [92].

(b) The applicant's reasons for the proposed choice; and

(c) any possible alternative methods of discharge, including discharge into any other receiving environment.

3.6 The s 42A report concludes that the actual and potential adverse effects associated with any dewatering discharge will be low and that, subject to the proposed conditions of consent, the discharge satisfies the requirements of ss 105 and 107 of the Act.

3.7 The proposed flap gate is a non-complying activity under regulation 74 of the NES-FW. Accordingly, the Commissioners must also consider the gateway test in s 104D. The applicant's position is that s 104D applies only to the flap gate component of the application and not to the broader stopbank proposal.

3.8 Under s 104D(1), consent may be granted if:

(a) the adverse effects of the activity on the environment will be minor; or

(b) the activity will not be contrary to the objectives and policies of the relevant planning framework.

3.9 The reporting planner, Jo Michalakis, and the Applicant's planner Mr S Exeter both concluded that the flap gate satisfies both limbs of the gateway test. They are satisfied that the adverse effects of the flap gate will be minor and that the proposal is not contrary to the relevant objectives and policies of the planning framework.

3.10 Section 106A of the Act is also relevant. Section 106A empowers a consent authority to refuse a land use consent, or impose conditions on a consent, where there is a significant risk from natural hazards.

3.11 Although s 106A(4) contains an exception for infrastructure, it is unlikely that stopbank works fall within the statutory definition of "infrastructure" for the purposes of that provision. It is therefore appropriate to address the section directly.

3.12 In Mr Muir's planning evidence on behalf of the Burgesses he opines that s 106A means that the land use consents that form part of the proposal "cannot be granted if [they] would accelerate, worsen or result in material damage to land or structures."[5] That is not correct: s 106A does not bar a consent being granted because of significant risk from natural hazards, it simply empowers the consent authority to decline consent or impose conditions in such circumstances, even when the planning context would not have provided that opinion. For this application, which involves fully discretionary and non-complying activities, with natural hazard risk issues already a factor, s 106A does not add anything new: you are already empowered to decline consent or impose conditions addressing natural hazard risk.

3.13 Both Mr Exeter and Ms Michalakis conclude that the proposal will result in an overall reduction in flood risk and that any residual natural hazard effects can be

5 Evidence of R Muir, 22 September 2026, para 6.12.

appropriately addressed through the proposed consent conditions, emergency management measures and associated mitigation.

4 Effects assessment

4.1 The RMA is not a "no effects" statute. There is no statutory requirement that all effects be addressed by way of mitigation, offset or compensation. The High Court has stated:[6]

> It is clear that Parliament did not intend the RMA to be a zero sum game, in the sense that all adverse effects which were unavoidable had to be mitigated or compensated.

4.2 This position was recently reaffirmed by the Environment Court in *C J Industries v Tasman District Council*:[7]

> As stated in the appellant's legal submissions, the RMA is not a no-effects statute. Every activity has some form of an effect and an approach of prohibiting activities with any adverse effects at all would not enable positive effects, or allow people to provide for their social, cultural or economic wellbeing, or be consistent with the authorities on how "avoid" policies are to be interpreted and applied, while accounting for whether there will be material harm.

4.3 Accordingly, the presence of adverse effects flowing from a proposal does not preclude the conclusion that the proposal should be granted consent.

4.4 The effects of the proposal, both positive and adverse, need to be considered within the context provided by the planning framework: it is not sufficient to simply apply an "overall broad judgment". Doing so risks subverting the planning framework that the RMA requires.[8] Rather, a structured analysis is required considering the circumstances of the application against the values inherent in the relevant planning instruments and, where necessary, assessing which conflicting directive policies should prevail.[9]

4.5 As noted above, the TRMP is required to give effect to national policy statements. This is a strong directive which lower order plans are obliged to implement.[10] The TRMP should be interpreted to give effect to this to the extent possible, and where its objectives and policies do not give effect to national policy statements, it must defer to them.

National Policy Statements

4.6 A full consideration of the relevant NPS and TRMP policies has been undertaken by Mr Exeter in parts 7.4 and 7.5 of the AEE. Our submissions focus on four key aspects of the NPSs that have yet to be fully incorporated into the TRMP:

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6 *Royal Forest and Bird Protection Society of New Zealand Inc v Buller District Council (No 2)* [2013] NZHC 1346, [2013] NZRMA 293, at [52].

7 *C J Industries v Tasman District Council* [2025] NZEnvC 213 at [324].

8 *RJ Davidson Family Trust*, at [71].

9 *Port Otago* at [78].

10 *RJ Davidson Family Trust* at [75].

(a) The NPS-I's policy that decision-makers must recognise and provide for the benefits of infrastructure;

(b) The NPS-I's policy that decision-makers must enable the upgrading of infrastructure where this will improve the resilience of infrastructure to the risks from natural hazards and effects of climate change;

(c) The NPS-NH's effects management hierarchy;

(d) The NPS-NH's emphasis on proportionality.

4.7 The NPS-I specifically includes flood control and protection works carried out by a local authority within its scope.[11] Policy 1 states:

> **Policy 1: Providing for the benefits of infrastructure**
>
> (1) Decision-makers must ensure that the national, regional or local benefits of infrastructure, relative to any localised adverse effects on the environment, are recognised and provided for.
>
> (2) Decision-makers must recognise that the benefits of infrastructure include: …
>
> (g) reducing the risks from, and improving resilience to, natural hazards and climate change.

4.8 The NPS-I also requires the enabling of infrastructure for certain purposes in Policy 4:

> **Policy 4: Enabling the efficient and timely operation and delivery of infrastructure activities**
>
> 1. Decision-makers must: …
>
> a. enable the efficient and timely delivery of infrastructure activities …
>
> f. enable the upgrading of infrastructure where this will:
>
> i. improve the resilience of infrastructure to the risks from natural hazards and effects of climate change;

4.9 In the context of this application, Policy 1(1) requires you to ensure that the local benefits of the stopbank proposal (in terms of natural hazard resilience), relative to any localised adverse effects, are recognised and provided for. This means that if you, as the decision-maker, encounter a policy in the TRMP that turns solely on localised adverse effects, without any scope for the benefits of the proposal to be weighed in a relative sense, you need to consider whether that policy gives effect to the NPS-I.[12] If not, the TRMP policy should defer to the

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[11] NPS-I, cl 1.4(1).

[12] RMA, ss 55(2B), 67(3) and 75(3).

NPS-I.[13] Similarly, Policy 4 requires an approach which enables the upgrading of infrastructure where this will improve resilience to natural hazards. If a policy in the TRMP prevents an enabling approach, the policy should defer to the NPS-I.

4.10 These policies are directive. Policy 4 in the NPS-I noted above is particularly so: on its face, the improvement of resilience to the risk from natural hazards provided by the proposal would appear to mandate it being granted under this Policy. While it is accepted that the NPS does not require the approval of any application for resource consent that improves the resilience of infrastructure to the risk from natural hazards, GDC submits that in light of the circumstances of this application it heavily supports granting the application.

4.11 Turning to the NPS-NH, its policies 2, 3 and 4 establish an effects management hierarchy:

> **Policy 2:** Natural hazard risk associated with subdivision, use and development must be managed using an approach that is proportionate to the level of natural hazard risk.
>
> **Policy 3**: Where subdivision, use or development is assessed as having very high natural hazard risk, that risk must be avoided.
>
> **Policy 4**: Where subdivision, use or development, including any associated mitigation measures, will create or increase significant natural hazard risk on other sites, that risk must be avoided or mitigated using an approach that is proportionate to the level of natural hazard risk.

4.12 In essence, very high natural hazard risk must be "avoided"; significant hazard risk (encompassing very high, high and medium risk[14]) to other sites is to be "avoided" (in the case of very high risk) or "mitigated" using a proportionate approach; all other natural hazard risk is to be "managed" using a proportionate approach.

4.13 The evidence confirms that none of the natural hazard risks associated with this proposal fit into the very high risk category, so the avoidance policy is not triggered.[15] What the NPS-NH requires is in respect of effects on other sites is mitigation using an approach that is proportionate to the level of natural hazard risk.

4.14 Proportionality is a key concept and point of emphasis in the NPS-NH. It Is not defined, but some guidance is provided by cl 3.3, which requires decision-makers to take into account the cost effectiveness of mitigation measures relative to the level of anticipated risk. Another consideration that might be factored in is the degree to which a proposal changes the level of risk.

4.15 Returning to the context of this application, if you are applying a TRMP policy regarding natural hazard risk mitigation that does not provide you with the scope to consider its proportionality, you need to consider whether that policy gives effect to the NPS-NH. If not, the TRMP policy should defer to the NPS-NH.

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13 *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, at [75].

14 NPS-NH, cl 1,4(1).

15 AEE, 7.4.1.

Tairāwhiti Resource Management Plan

4.16 Where applications for resource consent fall for consideration under regional and district plans, the relevant plan provisions must be considered and brought to bear on the application.[16] This involves assessing the merits of the application against the relevant objectives and policies in the plan.[17]

4.17 In addition, where s 104D applies and the adverse effects of the activity are more than minor, resource consent can only be granted if the activity is not contrary to the objectives of the relevant plan.[18]

4.18 When considering whether a proposal is contrary to or consistent with the objectives and policies of a relevant plan, a "fair appraisal of the of the objectives and policies read as a whole" is required.[19] It is also a requirement to work through inevitable tensions between policies in a plan.[20] The mere presence of tension does not open up an unfettered discretion to choose between unequal policies, but the presence of tension between stronger and weaker policies will not always be resolved in favour of the stronger.[21] Fact and context are important in determining the resolution of tensions between policies.

4.19 The AEE addresses the relevant objectives and policies of the TRMP. A number are of particular significance to the assessment of the effects of the proposal.

4.20 The following Objectives and Policies are of particular relevance:

(a) Policy C6.3.12 – Policies for Damming, Diversion and Drainage of Streams, Rivers and Lakes;

(b) Objective C7.1.3 – Land Management Objectives;

(c) Objective C8.1.3 – General Objectives (Natural Hazards);

(d) Policy C8.1.4 – General Policy (Natural Hazards); and

(e) Policy DD4.4.1(1) – All Rural Zones Policies.

4.21 GDC submits that the positive effects of the proposal make it generally consistent with these Objectives and Policies. Of particular note are:

(a) Objective C7.1.3(2) states the objective to reduce land and asset degradation caused by poor land management systems. This proposal will improve the management of land by reducing flood risk in a residential area;

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16 RMA, s 104(1)(b)(vi).

17 *R J Davidson* at [73].

18 RMA, s 104D(1)(b).

19 *Dye v Auckland Regional Council* [2002] 1 NZLR 337 (CA) at [25]; *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26, [2024] 1 NZLR 241 (***East-West Link***) at [79].

20 *East-West Link* at [80].

21 *East-West Link* at [80].

(b) Objective C8.1.3 provides the objective of a pattern of human settlement that:

(i) provides a high level of personal safety from natural hazards for its inhabitants;

(ii) avoids or mitigates the risk to property and infrastructure from natural hazards.

The proposal clearly promotes this objective by improving personal safety, and mitigating the risk to property and infrastructure, through reducing flood hazard risk to the settlement at Te Karaka.

(c) Policies in C8.1.4:

(i) In all hazard prone areas, any new subdivision, use and development should avoid or minimise any risk of loss of life or injury or other environmental damage due to natural hazard.

(ii) Mitigation works shall be designed and constructed in sympathy with the environment recognising:

(A) the dynamic, complex and interdependent nature of biological and physical processes;

(B) effect on amenity values;

(C) effects on the landscape and natural features of the locality;

(D) any effect on public access.

(iii) In carrying out hazard assessments or considering resource consent applications the possibility and implications of climate change are to be recognised. In particular the likelihood of the following matters should be considered:

(A) higher local temperatures;

(B) changes in rainfall patterns;

(C) increase in cyclonic storms.

The proposal is directed expressly toward the avoiding or minimising the risk of loss of life or injury from natural hazard risk. As a mitigation work, the evidence supports its design and construction to support the existing physical environment and amenity values. It also expressly anticipates future flood risk brought about by climate change.

(d) The Policy in DD4.4.1(1), which provides that when preparing plans or considering applications for plan changes, resource consents or designations in all rural zones regard shall be given to the following general policy as well as any specific policy relating to the zone:

(i) alternative methods and locations available to carry out the works or activities;

(ii) physical constraints to the site such as separation by rivers or roads, site configuration and layout.

The proposal has undergone an options assessment and consideration of multiple alternatives, with this option being selected as the best under multiple criteria and selected by the majority of responders in public consultation. Other options result in increased natural hazard risk at other sites.

4.22 A number of Objectives and Policies in the TRMP place requirements to avoid, remedy or mitigate adverse effects, in particular:

(a) Policy C6.3.12, which requires that damming, diversion and drainage of streams, rivers and lakes should only occur where significant effects are avoided or other adverse effects are avoided, remedied or mitigated;

(b) Objective C.7.1.3 provides the objective that land uses and management practices avoid, remedy or mitigate adverse effects on the environment;

(c) Policy C8.1.4(5) sets the policy to recognise the limits of attempts to control natural processes by physical work and restrict such attempts to appropriate situations where they will not cause or worsen hazards to other lands or waters;

(d) Policy DD4.4.1(1) sets the policy that when preparing plans or considering applications for plan changes, resource consents or designations in all rural zones regard shall be given to any adverse effect that the activity may have on existing rural activities.

4.23 Not all adverse effects of the proposal will be completely avoided, remedied or mitigated. Viewed narrowly, the proposal may be seen as in conflict with the above objectives and policies. However, there is no method of improving the stopbank system that would be without adverse effects in the form of increasing flood hazard risk in another location. For example, increasing the height of the existing stopbank would lead to greater upstream flooding and increased pressure on the bridges.

4.24 The provisions in the plan referred to above are not inherently in tension; however the proposal puts them in tension (and arguably creates internal tension within policies) by significantly reducing natural hazard risk for a large number of people, while increasing it for others.

4.25 Insofar as a tension is created between policies within the plan due to some adverse effects not being able to be completely avoided, remedied or mitigated, GDC submits that a fair appraisal of the TRMP supports the proposal. The policies related to land use and natural hazard risk in Tairāwhiti are clearly directed towards having people live and settle in locations where risks from natural hazards are avoided or minimised. The overall effect of the proposal is overwhelmingly to reduce natural hazard risk. Increasing protection from flooding risks necessarily involves the directing of floodwater somewhere else: where the water goes, risk will increase. This proposal directs floodwater away from more sensitive areas and towards less sensitive ones. GDC submits this must be consistent with the objectives and policies of the TRMP.

4.26 The Supreme Court held in *East-West Link* that tensions in the objectives and policies of a plan are not always resolved in favour of "avoid" policies.[22] In that case, the Court referred to features of the case that may resolve tensions in a different way, in particular that the proposal was for a public good (infrastructure), the plan in place carefully balanced competing priorities, and the underlying drivers in Auckland meant that necessary infrastructure that had to be located in sensitive areas could be consistent with the objectives and policies of the plan. GDC submits these features are also in play in this case.

4.27 In addition, GDC submits that interpretation of the TRMP provisions must give effect to the approach of proportionate management in the NPS-NH, and the policy of enabling infrastructure in the NPS-I. This means that, for example, Policy C6.3.12, which requires that damming, diversion and drainage of streams, rivers and lakes should only occur where significant effects are avoided, must be interpreted to ensure that the requirement to avoid significant effects is applied in a proportionate manner. The overwhelming positive effect on natural hazard risk from the proposal, combined with the reality that any alternative would have some adverse effects in the form of increasing risk elsewhere, means that a proportionate approach heavily supports granting the application.

4.28 As noted above, if there is unavoidable conflict between provisions of the TRMP and the NPS-NH and NPS-I, the national instruments must prevail.

5 Assessment of alternatives

5.1 Consideration of alternatives may be a relevant matter under s 104(1)(c) of the RMA, and cl 1(b) of Sch 4 of the RMA requires assessment of the effects on the environment to include a description of possible alternative locations or methods for undertaking an activity where that activity would result in any significant adverse effect on the environment.

5.2 Some consideration of alternatives may also be relevant to the application of:

(a) Policy 7 of the NPS-I, which states that decision-makers must have regard to the extent to which adverse effects have been avoided, mitigated or remedied through the selection of the route, site or method of undertaking the work.

(b) Section 3.9(2)(j) of the NPS-HPL, which provides that development on highly productive land is not inappropriate where there is a functional or operative need for the development of specified infrastructure, which includes flood protection works.

(c) Policy C6.3.12 of the TRMP, which provides that damming, diversion and drainage of streams, rivers and lakes should only occur where "there is no practical alternative".

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22 *East-West Link* at [82]-[84].

(d) Policy C8.1.4 of the TRMP, which provides that attempts to control natural processes by physical work be restricted to appropriate situations where they are "the best practical alternative".

5.3 However, outside of situations where adverse effects relate to matters of national importance, in general a comprehensive assessment of alternatives including cost/benefit analysis and establishing the option is the best available is not necessary.[23]

5.4 In 2025 GDC undertook an options assessment considering four stopbank alignment options.[24] The process for arriving at a preferred option began with an initial longlist to consider a wide range of options.[25] This was narrowed to a final longlist, before a multi-criteria analysis assessment was carried out to reduce this to a shortlist. The shortlist options were developed in more detail, which included hydraulic modelling, geomorphic assessments, and consultation with directly affected landowners. GDC developed a preferred option alongside consultation with the community and stakeholders.

5.5 The final longlist contained 6 options, including upgrading the existing stopbanks and five options for retreating the stopbanks at different distances. Four of these were carried through to the shortlist.

5.6 The shortlist options were presented at a community hui on 30 April 2025.[26] In June and July 2025, GDC provided an online form for feedback. Responses to this form reflected that 97% of respondents supported action being taken to improve flood resilience for Te Karaka; 74% of respondents supported the "make room for the river" approach of retreating the stopbank alignment, and 54% supported option 3, which was the option reflected in the resource consent application. Option 3 had scored the highest in the multi-criteria analysis.

5.7 GDC submits that this process has established that this proposal is the best practical alternative for reducing flood risk in Te Karaka, and the only practical alternative for delivering specific positive effects, such as the protection of non-residential assets. In the multi-criteria analysis, option 3 scored the same as other options in related to protection of residential properties; considerably better in relation to protection of other assets; and was only lower than option 4 in relation to its alignment with natural processes and sustainability (with option 4 being considerably worse in relation to asset protection). All options would have some adverse effects in relation to natural hazard risk: for example, option 1 (raising the height of the existing stopbank) would have protected a greater number of properties but would have worsened conditions upstream by the greatest amount.

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23 *Meridian Energy v Central Otago District Council* [2011] 1 NZLR 482; *Frielich v Tasman District Council* ENC Christchurch C015/2005, 11 February 2005; *Waste Management NZ Ltd v Hauraki District Council* [2024] NZEnvC 47.

24 Evidence of Sven Exeter at [9.11]; Appendix 6 to Application.

25 Appendix 6 to the Application at 3-4.

26 This was not the first community hui: hui had been happening since 13 April 2024 to update various stages of the process.

6 Bundling

6.1 Bundling, in the context of the RMA, refers to the practice of considering two or more activities in resource consent applications together for the purpose of determining the overall activity status that applies to the proposal.

6.2 Bundling in this way has substantive effects with potentially significant consequences. In particular, where activities with different activity statuses are bundled, the overall activity status governing the applications is generally determined by the most restrictive activity status within the bundle.

6.3 The present application comprises several activities that are proposed to be bundled and assessed together as a discretionary activity. However, the operation of the flap gates is a non-complying activity under rule 74 of the NES-F due to the potential effect of such structures on fish passage.

6.4 Several submitters contend that the flap gates application should not be treated separately from the other proposed discretionary activities.[27] They submit that all of the activities form part of a single proposal and should therefore be bundled together for activity-status purposes. If that approach is adopted, the overall application would have a non-complying activity status, as the flap gates are subject to the most restrictive activity status within the bundle.

6.5 In *Protect Aotea Incorporated v Auckland Council*, the Court noted that whether it is appropriate for a proposal to be subject to a more restrictive overall activity status, because of a single component of that proposal, depends on the nature of the relationship between the various activities.[28] In particular, the Court considered that the outcome is more likely to be appropriate where the more restrictive component is central to the proposal, but may be inappropriate where that component is merely tangential to the proposal as a whole.[29]

6.6 In the current instance, while the flap gates form part of the overall proposal, they are not the central element of the proposal. The flap gates can be more appropriately characterised as a discrete and ancillary component of the wider project.

6.7 Fundamentally, the effects of the two activities are distinct. The flap gates are not responsible for the consequential flooding effects arising from the stopbank alignment. Instead, they give rise to a separate set of effects relating to fish passage that can be assessed and addressed through conditions tailored specifically to their operation. It would therefore be inappropriate to subject the major part of the proposal, which involves discretionary activities, to the test for a non-complying activity in s 104D of the RMA.

6.8 A good litmus test for whether bundling is necessary can be whether a particular activity could be split off from the main application and advanced separately. In this case it would be plausible for GDC to seek consent for the stopbanks

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[27] Wi Pere Trust, Burgess, Ms J Moran.

[28] *Protect Aotea v Auckland Council* [2021] NZEnvC 140 (***Protect Aotea***) at [20] referring to *Body Corporate 97010 v Auckland City Council* [2000] NZRMA 202 (HC), upheld on appeal in *Body Corporate 97010 v Auckland City Council* [2000] 3 NZLR 513, [2000] NZRMA 529 (CA).

[29] *Protect Aotea*, at [20].

without the flapgates (although they would be less effective in certain conditions), and then seek consent for the flapgates separately afterwards.

7 Relevance of the Public Works Act 1981

7.1 The proposal meets the definition of a "public work" in the Public Works Act 1981 (**PWA**). Therefore where any land is acquired, "injuriously affected" by land acquisition or damaged from the exercise of powers under the PWA, the owners of the land will be entitled to compensation.[30]

7.2 Accordingly, there are two separate processes being undertaken, which involve separate assessments and separate considerations:

(a) The resource consent application, which considers the actual and potential effects on the environment of the activity in the planning context; and

(b) The process of obtaining necessary property rights and compensating landowners for the impacts of the proposal on property values.

7.3 In GDC's submission, the need to obtain property rights and the impact on property values are not appropriately considered "effects on the environment" for the purposes of the resource consent. However, the anticipated acquisition of property in order for the works to proceed is relevant to the determining what a "real world" view of the receiving environment is for the purposes of this application.

Receiving environment

7.4 GDC submits that for the purposes of an effects assessment the court must take a "real world" view of the receiving environment.[31] This specifically involves a real world approach to the activity's potential effects and therefore on the future environment.[32] The Court has found that "the reasonably foreseeable future environment must be realistically and practically assessed".[33]

7.5 GDC submits that a "real world" view of the receiving environment requires considering that some effects will be internalised by GDC acquiring land through the PWA process, and that adversely affected landowners who are entitled to compensation will be able to get it through the PWA.

7.6 The receiving environment must be viewed as the environment when and if the project is to proceed – that being the case, it must be assumed that GDC will have the necessary property rights (and discharged its legal obligations to compensate under the PWA) when the environmental effects of the proposal are actually realised.

7.7 GDC submits this is the appropriate lens through which to view the relevance of the PWA process to the assessment of the resource consent application. As a

30 Public Works Act 1981, s 60.

31 *Queenstown Central Ltd v Queenstown Lakes District Council* [2013] NZHC 815 at [85].

32 *Queenstown Lakes District Council v Hawthorn Estate Limited* [2006] NZRMA 424 at [57].

33 *Saddle Views Estate Ltd v Dunedin City Council* [2014] NZEnvC 243 at [23].

separate legal process, acquisition or compensation under the PWA is not a method of avoiding, remedying or mitigating an adverse effect, but rather is a determining factor in establishing what the adverse effects of the proposal will ultimately be.

Impact on property values

7.8 The RMA addresses environmental effects, while the PWA addresses the impact on private property value from the use of land for public works. A number of individual properties will be subject to environmental effects addressed elsewhere: in particular, there is an increase hazard risk at six residential dwellings identified in the assessment of environmental effects.[34] There are also potential effects on non-residential properties noted by submitters, such as the impact on the use of land for orchards.[35]

7.9 Independent of these environmental effects, impacts on property values are generally not a relevant consideration under s 104 of the RMA. Declining property values are simply a measure of adverse effects on other values, and it is preferable to consider those effects directly rather than via a potentially imperfect market response.[36]

Conditions 69-70

7.10 The section 42A report has recommended conditions 69-70, which require the applicant to obtain necessary land interests to authorise consequential flooding effects on seven properties, and to authorise occupation of subject properties.

7.11 A resource consent does not grant GDC the property rights required to build the stopbanks: GDC will have to acquire these, most likely through the process set out in the PWA. A resource consent also does not relieve GDC of any obligations it has to landowners under the PWA. The nature of private property rights and what property rights are required for a proposal are outside the jurisdiction of this hearing and cannot be determined in a resource consent application.[37]

7.12 GDC therefore submits that proposed conditions 69-70 in the s 42A report are unnecessary and inappropriate as conditions of a resource consent. GDC will need to obtain necessary land interests to proceed with the proposal regardless of obtaining resource consent: removal of these conditions will not remove the need for any necessary interests to be obtained or compensation to be provided.

7.13 Conditions 69-70 would accordingly not be for a resource management purpose. The PWA is a separate legal regime and its application will not refer to whether or not acquisition or compensation has the outcome of avoiding, remedying or mitigating adverse effects on the environment. Its provisions cannot then be used in a resource consent for these purposes. The Courts have taken the clear

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[34] Page 65.

[35] Noted in s 42A report at page 110.

[36] *Tram Lease v Auckland Transport* [2015] NZEnvC 137 at [57]-[60]; *Bunnik v Waikato District Council* ENC Auckland A42/96, 24 May 1996.

[37] *Schofield v Auckland Council* [2012] NZEnvC 68 at [9]; *Director-General of Conservation (Nelson-Marlborough Conservancy) v Marlborough District Council* [2010] NZEnvC 403 at [32]-[34].

legal position that resource consent conditions must be for a resource management purpose and not an ulterior one.[38]

7.14 Were the conditions to be retained, there is a risk that in the case of a dispute around compliance, the Environment Court would be required to determine the existence or otherwise of property rights, and the adequacy of compensation under the PWA. These matters sit beyond the Environment Court's jurisdiction, and therefore the conditions create the risk of uncertainty as to future determination of whether they have been fulfilled.

7.15 Further, there is a risk that outcome of PWA processes might not align with the proposed conditions 69-70. For example, the PWA process might result in fewer, or more, properties being acquired or entitled to compensation. It is not appropriate for the resource consent conditions to pre-empt the PWA process.

8 "Over-design" events

8.1 Several submitters have raised concerns regarding the consequences of flood events that exceed the design standard adopted for the proposal (over-design events). GDC submits that those concerns should not be afforded disproportionate weight in the assessment of this application for three reasons:

(a) it is necessary to distinguish between effects caused by the proposal and the consequences of an extreme flood event that would occur irrespective of the proposal;

(b) the statutory framework requires a proportionate assessment of risk; and

(c) Section 104 of the RMA requires having regard to actual and potential *effects of allowing the activity*.

8.2 GDC submits that the residual risk associated with an over-design event is not an effect that can be attributed solely to the proposed stop bank works. Rather, it arises from the occurrence of an extreme natural hazard or flooding event. By definition, such an event would result in flooding consequences irrespective of whether the proposal proceeds.

8.3 The relevant question is therefore whether the proposal materially changes the severity of those consequences. In that regard, the evidence demonstrates that any increases in flood levels or flood hazard arising during over-design events are limited in extent. They are confined to a small area of the township which is predicted to experience a flood-level increase of up to approximately 0.1m. this represents a very minor change. Importantly, those effects must be assessed against an environment that is already subject to flood risk, and do not represent a material increase in that risk.

8.4 An "effect" includes any potential effect of low probability which has a high potential impact.[39] The statutory framework therefore requires consideration of both the magnitude of a potential effect and the likelihood of it occurring.

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38 *Newbury District Council v Secretary of State for the Environment* [1981] AC 578, [1980] 1 All ER 731; *Waitakere City Council v Estate Homes Ltd* [2006] NZSC 112 at [61].

39 RMA, s 3.

8.5 The NPS-NH adopts a similar approach. It does not seek to eliminate all natural hazard risk. Rather, it requires natural hazard risk to be managed in a manner that is proportionate to the level of risk identified, taking into account both the likelihood of an event occurring and the consequences.[40] The policy therefore recognises that decision-making must involve a judgment about acceptable residual risk and does not require infrastructure proposals to guard against every conceivable outcome.

8.6 Importantly, the purpose of the proposal is to achieve a substantial reduction in flood risk for Te Karaka. The evidence demonstrates that the project will materially reduce the frequency and severity of flooding experienced by the township and will improve resilience for approximately 200 properties and associated infrastructure. The existence of residual risks in extreme over-design events does not alter that overall outcome.

8.7 The relevant question is therefore whether the residual risks arising in over-design events are significant when considered in light of their likelihood, the overall reduction in flood risk achieved by the proposal, and the mitigation measures proposed. GDC submits that the evidence demonstrates that they are not. While some residual consequences remain in extreme events, those consequences are proportionate to the level of risk involved and do not outweigh the substantial public benefits and overall reduction in natural hazard risk delivered by the proposal.

9 Rangatira Road and Kanakanaia Road Bridges

9.1 As noted above, the NPS-NH directs that risk is to be managed using an approach proportionate to the level of risk identified and that risk assessments and decision making are to use the best information available at the time.

9.2 Council's evidence anticipates increased hydraulic loads and scour depths for the Rangatira Road and Kanakanaia Road Bridges in a design event involving a 5,625 m^3/s flood. While the available assessment identifies increased loading and scour at both bridges, it concludes that the Rangatira Bridge pier wall has adequate capacity for the design loading considered. By contrast, the Kanakanaia Road Bridge is considered at risk of structural failure during the design even regardless of whether the upgrade proceeds. The CFRA noted that a full structural capacity assessment would be required to confirm overall capacity.

9.3 GDC submits that the "best information available" standard provided in the NPS-NH does not require all conceivable steps to be undertaken to obtain further information. It ought to be read in light of the requirement to take a proportionate approach to risk. The information available identifies that there will be increases in structural loads on the bridges in the design scenario; it also provides us with information about the design of the bridges which inform what loads they can withstand.

40 NPS-NH, cl 3.2-3.3.

9.4 As indicated by the evidence of Mr Hooker, the current information available is adequate to provide a reasonable assessment of the risk presented according to the NPS-NH risk matrix.[41]

9.5 Similarly, conducting a full geomorphological study of aggradation scenarios would not be proportionate to the risk and is not required by the "best information available" standard. As noted in the evidence of Mr Hooker, developing a morphological model to predict the evolution of the river would be a considerable and time-consuming project. It would also produce a range of numbers and considerable uncertainties, and therefore would be unlikely to add considerably to the information that is available.[42]

9.6 GDC submits that the information before the Commissioners is of clearly adequate quality and sufficient detail. The information enables an understanding of the flooding effects of the proposal, including on the Rangatira Road and Kanakanaia Road Bridges, and the Commissioners are therefore able to decide the level of effects based on a sufficiently and relevantly informed understanding of those effects.[43]

10 Conclusion

10.1 GDC submits that the legal framework supports the Commissioners proceeding to grant the application for resource consent.

10.2 A fair appraisal of the TRMP, and relevant national instruments, demonstrates that the proposal is consistent with the applicable objectives and policies within the planning framework under the RMA. Indeed, directive policies in national instruments strongly weigh in favour of the proposal being granted due to its significant positive effects in reducing natural hazard risk for the Te Karaka community. The inevitable adverse effects of such a major project are avoided, remedied and mitigated to a substantial degree, and any residual adverse effects are not of the nature to justify declining the application. Further management of adverse effects through conditions remains an option.

10.3 In relation to further discrete legal issues, GDC submits:

(a) That the bulk of the application should be treated as a discretionary activity, with the one non-complying activity treated separately;

(b) The PWA should be treated as a separate process, such that conditions of the resource consent should not be contingent on PWA outcomes;

(c) Proportionate management requires that "over-design" events not play an outsized role in the Commissioners' decision-making; and

(d) The information before the Commissioners regarding flooding effects, in particular the effects on the Rangatira Road and Kanakanaia Road Bridges, is clearly adequate to assess the effects of the proposal.

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41 At [10.23].

42 At [10.10]-[10.11].

43 *Gabler v Queenstown Lakes District Council* [2017] NZHC 2086 at [65]; *Remediation (NZ) Ltd v Taranaki Regional Council* [2026] NZHC 55 at [115]-[116].

10.4 This proposal represents an opportunity to protect the community of Te Kanaka from flood hazard risk for years into the future. GDC submits that this opportunity should be taken, and resource consent granted.

Date: 25 September 2026

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