

# Waipaoa Flood Control Scheme - to upgrade the Gisborne Waipaoa Flood Control Scheme (WFCS) and to develop a cycleway/walkway for public access along the stopbank network.

## Decision following the hearing of an application for resource consent under the Resource Management Act 1991

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### Proposal

The Gisborne District Council (GDC) seeks resource consent to:

- upgrade the Waipaoa Flood Control Scheme (WFCS); and
- to develop a cycleway/walkway for public access along the upgraded stopbank network.

The upgrade works are designed to achieve a more resilient stopbank structure and to provide flood control up to a 2090 1% AEP design event.

The proposed cycleway/walkway is to develop and promote public access along the river corridor.

### Summary of decisions

The resource consent to upgrade the Waipaoa Flood Control Scheme (WFCS) is **GRANTED**

The resource consent for the cycleway/walkway is **REFUSED**.

The reasons for these decisions are set out below.

<b>Application number(s):</b>	LU-2017-107781-00; LL-2017-107782-00;LR-2017-107783-00
<b>Location</b>	Approximately sixty four kilometres of stopbank located along both sides of the Waipaoa River, from the coast to Te Karaka (but excluding the Te Karaka Scheme) and including sections of the contributing Te Arai River and Whakaahu Stream.
<b>Applicant:</b>	Gisborne District Council
<b>Hearing commenced:</b>	19 September 2018 at 9.00am
<b>Hearing panel:</b>	Mr Greg Hill - Independent Hearings Commissioner.

<b>Appearances:</b>	<p><u>For the Applicant:</u></p> <ul style="list-style-type: none"> <li>• Ms Rachael Zame – Legal Counsel</li> <li>• Mr Daykin - Four Waters Operations Manager for the Council</li> <li>• Mr Joss Ruifrok - Senior Project Engineer for the Council</li> <li>• Mr Craig Goodier - Principal Engineer - Hawkes Bay Regional Council (Consultant to the Applicant)</li> <li>• Mr Janic Slupski - Senior Policy Planner with the Council (Landscape Architect)</li> <li>• Mrs Stella Morgan - Planning Consultant</li> </ul> <p><u>For the Submitters:</u></p> <ul style="list-style-type: none"> <li>• Mr David Peacock</li> <li>• Mr Geoffrey Pollard and Mr McLanachan (as a witness)</li> <li>• Mr Gordon McPhail</li> </ul> <p><u>For the Council:</u></p> <ul style="list-style-type: none"> <li>• Mr Todd Whittaker - Planning Consultant</li> <li>• Mr Brian Kouvelis - Civil Engineering Consultant</li> <li>• Mr Paul Murphy - Team Leader Water and Coastal Resources</li> </ul> <p><u>Hearing Administration</u></p> <ul style="list-style-type: none"> <li>• Ms Maxine Paenga - Resource Consents Administration Officer</li> </ul>
<b>Hearing adjourned</b>	19 September 2018
<b>Commissioners' site visit</b>	18 September 2018
<b>Hearing Closed:</b>	5 October 2018

## Introduction

1. This decision is made on behalf of the Gisborne District Council (the "Council" or GDC) by Independent Hearings Commissioner - Mr Greg Hill, appointed and acting under delegated authority pursuant to section 34A of the Resource Management Act 1991 ("the RMA").
2. This decision contains the findings from my deliberations on the applications for resource consent. It has been prepared in accordance with section 113 of the RMA.
3. The application was publicly notified and 26 submissions were received. The proposed cycleway/walkway was the main issues raised in the submissions; both in support of and opposition to the application. Other submissions raised concerns about the effects of the upgrade works and new flood design levels on private property and how the model and design parameters had been assessed.

## Summary of proposal and activity status

### As notified

4. The proposal by the Applicant, as notified, is for the upgrade of the Waipaoa Flood Control Scheme (WFCS), and has two parts. The first involves the upgrading of the existing stopbank structures and network to improve the structural integrity of the stopbanks and to achieve a higher level and more uniform standard of flood mitigation. The second part of application is a proposal to enable the stopbank network to be developed for cycle and pedestrian access.
5. The application described the design parameters for the proposed upgrade which seeks to provide flood control for a storm event based on 2090 climate change projections and assuming a 1% AEP rainfall event. The design levels for the stopbank allow for a 0.6m to 0.9m freeboard. Detailed design along each portion of the existing stopbanks is proposed prior to the commencement of construction works for each stage. The total construction period was likely to take approximately 10 years.
6. With respect to the cycleway/walkway, the Applicant, at this stage had not identified its actual location. It proposed that it be undertaken in conjunction with community interest, user demand and any necessary private landowner negotiations. Funding allocations would be secured and reviewed through Council's Long Term Financial Plan. For the purpose of the consent application, the proposal seeks consent to establish a cycleway/walkway over the entire stopbank network.
7. In late 2017 it became apparent to the Applicant that the Council (via its reporting officer and technical experts) required further information in relation to the proposal; and in particular further refinements to the modelling that has been undertaken. The Applicant agreed.
8. As a consequence, a request was made to me by the Applicant to adjourn the hearing which was scheduled to commence on Wednesday, 6<sup>th</sup> December 2017. This adjournment was in accordance with Section 91A of the RMA and was accepted.

### Updated proposal.

9. The Applicant undertook additional (refined) modelling and calibration work. As a consequence of this provided an 'updated' Application for Resource Consent dated June 2017<sup>1</sup>.
10. An updated planning assessment was also provided by Mrs Morgan (summarised below). As part of this she also provided an analysis of whether the application was 'in scope' to that originally notified given the resulting changes from the refinement of the modelling.
11. The changes to the application are summarised as follows:

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<sup>1</sup> An explanation of the refined modelling and calibration work undertaken by Mr Goodier has been included in his additional report as part of the Applicant's package of further information provided to GDC. Further analysis was also provided by Mr Ruifrok in relation to engineering issues and Mr Slupski in relation to natural character and landscape effects.

### *Heights of Stopbanks*

12. Due to the updated modelling work, this has resulted in some changes to the height of the stopbanks. The updated application<sup>2</sup> (as well as in the legal submissions and evidence) provided details on the range of levels estimated for the addition to stopbank heights. The upper limit of the identified range was an additional 1.6m, with the upper limit now closer to 1.78m. That is - the upper limit is an increase of 18cm from what was signalled in the original application.

### *Ormond Bypass*

13. The Ormond bypass involves the construction of a new culvert, floodgate and 40 metres of earthen stopbank, seeded and grassed, across Mahunga Stream located (approximately) behind/southwest of 1183 Matawai Road<sup>3</sup>. According to Mrs Morgan this is proposed in response to Submission #13 (C. Thompson, 1203 Matawai Road, Ormond) that queried the ability to raise the existing stopbanks along the Mahunga Stream and sought additional detail on what is proposed for that area and the impact on adjacent properties.
14. The proposed Ormond bypass will remove the need to upgrade the existing stopbanks along the Mahunga Stream, including outside Mr Thompson's property. It will provide a number of additional benefits (as outlined in Mr Ruifrok's report). As set out by Mrs Morgan, no properties will be affected by the amendment, while Mr Slupski has assessed this part of the proposal as having no adverse visual effects.

### *Mullooly's Bend Realignment*

15. A minor realignment of the existing stopbank is proposed at Mullooly's Bend. The realignment is as a result of refinements to the flood modelling and in response to matters raised in Submission #15 (D. Peacock).
16. The realignment involves a landward shift of the stopbank (just under 1 kilometre in length and up to 130m westward shift at its maximum distance) at this bend to enhance flood hydraulics by widening and improving the flood carrying capacity, resulting in a corresponding lowering of flood levels upstream. The application sets out that the Council specifically purchased the property in 2002 for soil, conservation and river control work on the bend in order to facilitate this realignment. No other properties, other than Council's land, are affected by the proposed realignment.

### *Additional earthworks*

17. The amount of earth material required has increased substantially from approximately 750,000 m<sup>3</sup> to 1.4 million m<sup>3</sup>. However, according to the Applicant, the parameters of the borrow excavation remain unchanged. The borrow excavation will on average be 600mm or less with maximum average depth of 1000mm across the 334 hectares of Council owned land. It includes removal of approximately 150mm of topsoil which will be stored and re-used progressively as works are completed.

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<sup>2</sup> table within Appendix 4

<sup>3</sup> As shown in Figure 2 of Mrs Morgan's updated planning assessment, and detailed in paragraphs 80 -105 of the Further Report by Mr Ruifrok.

18. The Applicant has reconfirmed that due to natural character sensitivities of the coastal area of the WFCS, no borrow material will be taken from the estuary area below the rail bridge.
19. The Applicant considers that the increase in volume of earthworks remains within the overall scale and intensity of the borrow works sought in the application, and that any effects will be mitigated in accordance with the offered conditions.
20. In summary, the changes to the application are;
- The height of the stopbanks has been remodelled and a higher level of stopbank is required in some places to achieve the mitigation proposed for the design event;
  - The amount of earthworks to form and modify the stopbanks is estimated to increase from approximately 750,000 m<sup>3</sup> to 1.4 million m<sup>3</sup> (noting that the plan provisions are not triggered by a volume of earthworks);
  - The construction period will be affected given the change and scale of earthworks (from 10 to 13 years);
  - Two modifications to the alignment of the stopbank have been specifically included; a new section of stopbank at Ormond, and a modification of the location of the stopbank alignment at Mulooy Bend; and
  - Under the new design, the WFCS will 'hold' more water in significant flood events and this will have effects on the flood levels for upstream properties and the Wi Pere Trust landholding.
21. The issue of "scope" is detailed later in this decision. It is the Applicant's position that the changes to the proposal do not involve any new extension to the design event (1% AEP including climate change out to 2090) which is the ultimate design for the proposed upgrade. The updated information provides additional analysis of the flood model and assumptions which has resulted in changes to the design of the stopbanks to achieve the design event mitigation.
22. Overall, including the update to the applications as detailed above, the proposal is a **Discretionary activity**. There was no contention by any party about the activity status.

### **Site and locality**

23. The site and locality were fully described in the application documents (including Mrs Morgan's updated Planning Assessment Report), the Council officer's section 42A report and by a number of submitters. I agree with the descriptions provided, and undertook my own site visit. Rather than repeat all of that material I adopt those parts of the application and section 42A report and cross-refer to the material accordingly.
24. In summary the existing WFCS extends over approximately 64 kilometres and along both banks of the Waipaoa River and partially up the tributaries of the Whakaahu Stream and the Te Arai River. The scheme commences at the coastal margin and extends inland through to the Te Karaka settlement but excludes the stopbanks developed as part of the Te Karaka scheme. In some sections the stopbanks run

directly adjacent to the Waipaoa River and in other sections there are large areas of berm which are used for various rural and cropping uses.

25. GDC had prepared a Landscape Statement which provided a professional assessment of the landscape character and environs of the Waipaoa River and the existing WFCS. This helpfully provided a detailed discussion of the different landscape elements of the scheme and the context and sensitivities of the landscape to the proposed construction works and upgrading of the scheme.

## **Procedural matters**

### Scope

26. As set out above, it is necessary, prior to any determination of the merits of this proposal, to determine if the updated application is 'in scope' of the application as publicly notified.
27. The issue of scope was comprehensively addressed in the Applicant's opening legal submissions, and in the supplementary evidence of Mrs Morgan. Both statements considered that the application was 'in scope' and could be considered on its merits.
28. Scope was also addressed by the Council's reporting officer in his updated section 42A report. At paragraph 30 he set out that "*On face value, the changes in the application can be considered significant, particularly with respect to the change in earthworks. There are, however, a number of factors which are relevant to the assessment of scope and the actual effects and impacts of the proposed changes*" - and then set out what they were.
29. While Mr Whittaker detailed the changes, which was helpful, he ultimately did not offer an opinion as to whether the proposal was within scope or not. He did however offer the following opinion, which the Applicant addressed at the hearing.

*In my opinion, the additional flood levels on existing house sites including the Wi Pere Trust land will need to be further considered. I understand that the applicant is consulting further with the identified parties and that there may be some opportunity to gain written approvals. If written approvals are obtained, this would negate any scope or effects associated with these parties<sup>4</sup>.*

30. With respect to the Wi Pere Trust, an agreement was reached between it and the Applicant. This agreement is in the nature of agreed conditions which the Applicant had accepted and offered on an Augier basis. Ms Zame, in her opening legal submissions, stated "*The Applicant seeks therefore that the conditions attached to the supplementary evidence of Mr Haronga be imposed on the consents, if granted.*"<sup>5</sup>
31. Approvals had also been obtained from Messrs Newman, the owners of the upstream properties which may have been affected by the 'updated' proposal. The written approval of Mr Richard Newman was tabled at the hearing. The approval from Mr Michael Newman (the owner of houses A and B) had been verbally obtained

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<sup>4</sup> Paragraph 37 of Mr Whittaker's updated section 42A report.

<sup>5</sup> Opening Legal Submissions – paragraph 82.

just prior to the hearing and confirmed prior to the adjournment of the hearing that the written approval had also been obtained. In the Applicant's Reply Statement, Ms Zame stated:

*"The Applicant confirms that it has reached agreement with the remaining upstream owner (Michael Newman) of Houses A and B. This landowner was mentioned in opening legal submissions at paragraph 45. Mr Newman has now confirmed acceptance of an offer from the Applicant for financial mitigation..."*<sup>6</sup>

32. In terms of the scope issue, the impact on bridge infrastructure was raised. At the hearing the Applicant confirmed that it has continued discussions with Tairāwhiti Roads (which is a joint venture between NZTA and GDC as roading authority, and responsible for managing the state highway and local roads within the Gisborne region) regarding the application and potential effects on the bridge infrastructure.
33. In her Reply Statement, Ms Zame attached a letter from the General Manager of Tairāwhiti Roads confirming that consultation has been undertaken and is continuing, and that any potential impacts on the bridges can be dealt with at detailed design stage. I also note this is in accordance with the agreed position reached by the engineers at caucusing. I am satisfied with this response from a scope perspective.
34. I agree with the Applicant's assessment that the application is within scope to that originally notified. This is based on the 'facts' as set out in the opening and reply legal submissions, the evidence, the 'agreement/approval' from the affected parties (as set out above) and answers to my questioning of the Applicant and Mr Whittaker.
35. Given the comprehensive nature of the coverage of the scope issue from all parties that addressed it, I see no merit in reproducing that extensive commentary in this decision. It is my finding, that the updated proposal is unchanged from its notified purpose – to upgrade the existing stopbank structures and network to improve the structural integrity of the stopbanks and to achieve a higher level and more uniform standard of flood mitigation – providing flood control for a storm event based on 2090 climate change projections and assuming a 1% AEP rainfall event.

## **Relevant statutory provisions considered**

36. As set out above, the applications when bundled are a Discretionary Activity. Pursuant to section 104 of the RMA, when considering an application for a resource consent, and any submissions received, the consent authority must, subject to Part 2, have regard to:
  - (a) any actual and potential effects on the environment of allowing the activity; and
  - (ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and

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<sup>6</sup> Applicant's Reply Statement – paragraph 34.

- (b) any relevant provisions of—
  - (i) a national environmental standard:
  - (ii) other regulations:
  - (iii) a national policy statement:
  - (iv) a New Zealand coastal policy statement:
  - (v) a regional policy statement or proposed regional policy statement:
  - (vi) a plan or proposed plan; and
- (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

37. In accordance with section 104 of the RMA, I have had regard to those matters set out above, and I address these below, as well as having considered the proposal against Part 2 of the RMA given the Court of Appeal's judgement in the RJ Davidson case<sup>7</sup>.

38. On the 21 August 2018 the Court of Appeal issued its judgement on the RJ Davidson case. It stated, amongst other things:

*"Having regard to the foregoing discussion we agree with Cull J's conclusion that it would be inconsistent with the scheme of the Act to allow regional or district plans to be "rendered ineffective" by general recourse to pt 2 in deciding resource consent applications, providing the plans have been properly prepared in accordance with pt 2. We do not consider however that King Salmon prevents recourse to pt 2 in the case of applications for resource consent. Its implications in this context are rather that genuine consideration and application of relevant plan considerations may leave little room for pt 2 to influence the outcome"*<sup>8</sup>.

39. In my view that judgment says (in short) that notwithstanding the King Salmon judgment, decision makers should consider Part 2 when making decisions on resource consents. However, where the relevant plan provisions have given effect to Part 2, there may be no need to do so as it would not add anything to the evaluative and decision making exercise.

40. I agree that it would be inconsistent with the scheme of the RMA to override those plan provisions through recourse to Part 2 as *"genuine consideration and application of relevant plan considerations may leave little room for Part 2 to influence the outcome"*<sup>9</sup>.

41. The issue of whether I should or need to have recourse to Part 2 was discussed in some detail at the hearing. Both the expert planners (Mr Whittaker and Mrs Morgan) opined that the provisions of the Tairāwhiti Resource Management Plan

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<sup>7</sup> *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316

<sup>8</sup> Court of Appeal Judgment - paragraph 83

<sup>9</sup> *ibid*

(Tairāwhiti Plan)<sup>10</sup> gave effect to the relevant 'higher order' statutory planning documents and Part 2 of the Act in relation to these applications.

42. However, Mrs Morgan, as addressed in her evidence, and in answering a question, considered that the due to the significance of flood protection to the Gisborne community (including the management of significant risks from natural hazards – a (section 6 matter) that Part 2 was particularly relevant to the social, cultural and economic wellbeing of the Gisborne community. I agree.

43. While I accept the expert planning advice that the Tairāwhiti Plan has addressed the 'higher order' statutory documents and Part 2, I have nonetheless considered Part 2 due to:

- that part of the proposal is within the coastal environment where the New Zealand Coastal Policy Statement applies, and
- due to the significance of the flood protection to the Gisborne community in terms of its social, cultural and economic wellbeing.

### **Relevant standards, policy statements and plan provisions considered**

44. In accordance with section 104(1)(b)(i)-(vi) of the RMA, I have had regard to the NZCPS, relevant policy statement and plan provisions of the Tairāwhiti Plan.

45. The table below, as provided by the Applicant, describes the consent applications with reference to the planning rules as contained in the Tairāwhiti Plan which updates the respective rule references described in the application documentation.

	<b>Tairāwhiti Plan Rule</b>	<b>Zone/Overlays/Special Areas</b>	<b>Activity Status</b>	<b>Activity</b>
<b>Stopbanks</b>				
1	9.1.6(39) 9.1.6(47) 3.14.3(9)	Outstanding Landscape Area Riparian Management Area	Restricted Discretionary	Vegetation clearance
2	9.1.6(41) 9.1.6(48) 3.14.3(10)	Coastal Environment Overlay	Restricted Discretionary	Earthworks
3	3.12.3(13)	Coastal Environment Overlay	Discretionary	Vegetation Clearance and land disturbance within 200m of Mean High Water Spring
4	5.6.1(36)	Amenity Reserve Zone	Discretionary	Flood Control Works
5	8.2.3(3) 8.2.3(4) 8.2.3(5) 8.2.3(16)	Flood Hazard Overlays (F1, F2, F2A, F3 and F4)	Restricted Discretionary	Works for Stopbanks including fencing, land disturbance and flood control works

<sup>10</sup> Since the lodgement of the application, the previous district and regional plans have been amalgamated to form one plan, The Tairāwhiti Resource Management Plan (Tairāwhiti Plan).

	8.2.3(20) 8.2.3(27)			
6	7.1.6(20)	Land Overlay 1	Controlled	Ground levelling with side cutting deeper than 1m.
7	9.1.6(40)	Outstanding Landscape Area	Restricted Discretionary	Tree planting
8	6.3.2(16)	Regional Consent	Discretionary	Use, erection, placement, removal or demolition of structures in the bed of a river.
9	6.3.13(4)	Regional Consent	Discretionary	Damming, diversion and drainage of water in the bed of a river or stream which does not comply with permitted activity standards, except for Outstanding Waterbodies in Schedule G18 - Outstanding Waterbodies
10	9.3.5(7)	Regional Council	Restricted Discretionary	Vegetation clearance within a Riparian Margin
<b>Cycleway/walkway</b>				
11	4.6.1 (29)	Rural	Discretionary	Recreational activities and public access (an activity not otherwise listed within the zone)

## Summary of evidence heard

### Council Officers

46. The Council planning officer's section 42A reports were circulated prior to the hearing. This included the initial section 42A report and a further report addressing the Applicant's updated application. These reports, authored by Mr Whittaker, with input from technical specialists (Mr Kouvelis, Ms Thompson and Mr Murphy), addressed the proposal in terms of the effects on the environment and the statutory policy framework. The further section 42A report addressed the issue of "scope" and particularly noting concerns raised by Ms Thompson and Mr Murphy regarding the scale of the earthworks and the Ormond bypass.
47. Due to the technical issues raised through the assessment of the original application, the Applicant prepared additional technical information. This has been subject to a formal expert caucusing meeting between technical experts. Mr Kouvelis was a signatory to the (largely) agreed caucusing statement between the technical experts.
48. Overall, it was Mr Whittaker's professional opinion that, subject to the issue of scope, that the applications be granted subject to a suite of conditions attached to his reports and those agreed between the parties. Mr Whittaker maintained this position having heard all of the evidence at the hearing.

### Applicant

49. **Ms Zame** provided opening legal submissions. She set out that the project was critically important to the Gisborne region. This was because the existing scheme protects not only 10,000 hectares of Gisborne’s highly productive land, but also the urban areas of Gisborne city, Makaraka and Ormond, and this proposal is to upgrade those existing stopbanks to improve resilience against flood events and account for climate change.
50. She set out that “*proposed upgrade is essential to the protection of lives, property and economy of this area, and for this reason it is council’s highest priority infrastructure project.*”<sup>11</sup>
51. Ms Zame comprehensively addressed the issue of ‘scope’ in respect of the updated application. She then addressed
- Statutory responsibilities of Council and funding of the Scheme;
  - Statutory planning documents and Part 2 matters;
  - Amenity issues relating to the cycleway/walkway; and
  - Leasing arrangements of land owned by GDC adjacent to the stopbanks.
52. **Mr Daykin**, responded to questions, particularly those relating to the proposed 4m crest width of the stopbanks and the purpose for this.
53. **Mr Ruifrok**, produced two sets of evidence - the first in relation to the initial proposal, and the second in terms of the updated proposal. At the hearing he gave an overview of the proposal and in particular the updated proposal, as well as answered questions.
54. Mr Ruifrok's first statement focused on engineering issues related to the proposal and those raised by the Council (Mr Kouvelis), in submissions and in the section 42A reports. He also provided an overview summary of the technical modelling information and amendments that have been made to the model to clarify the flood model.
55. His evidence in relation to the updated proposal focused on:
- Stopbank Heights
  - Earthworks,
  - Stopbank bypass across the Muhanga Stream, Ormond Township, and
  - Issues canvassed in Section 3 of the Supplementary s42A Report relating to the Effects Assessment, and in particular in relation to:
    - Wi Pere Trust land,
    - Dwellings located directly upstream of the scheme, and
    - Bridges (Matawhero Bridge & Rail Bridge).

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<sup>11</sup> Opening Legal Submissions – paragraph 4.

56. **Mr Goodier** also produced two sets of evidence detailing the modelling of the Waipaoa Flood Control Scheme. In the first statement he outlined the results of a hydrodynamic computer model which he had developed to simulate the flow in the river. He set out that the results showed the comparison of the peak flood levels for the existing scheme as compared to the proposed scheme for a particular design discharge.
57. He further addressed that several iterations of modelling had been completed for this project originally starting from a 1-Dimensional model, then moving to a fully 2-Dimensional model, then after recommendation from a peer review of previous models the decision was made to use a coupled 1D/2D model. The coupled 1D/2D model was peer reviewed by Danish Hydraulic Institute (DHI), the suppliers of the modelling software.
58. Following the technical review of the model given the issues raised through the assessment of the original application, Mr Goodier produced a supplementary statement addressing the revised model and its results.
59. Mr Goodier was also a signatory to the (largely) agreed caucusing statement between the technical experts in relation to the technical issues relating to the modelling information and the design of the overall flood protection structures.
60. **Mr Slupski** produced evidence relating to the natural character and landscape values of the area and the effect the proposal would have on these. His opinion was that proposal will continue to have no adverse effects on either the coastal environment or the wider Poverty Bay landscape.
61. With regard to the proposed cycleway/walkway, he considered that from a landscape perspective, any adverse effects would be mitigated. This would be by suitable landscaping where the trail accesses the stopbank within the Poverty Bay Coastal Margin and dropping the cycle trail off the stopbank crest and down to the riverside toe so that there was no visual impact or adverse effect on dwellings located adjacent to the existing stopbank (on the landward side).
62. In his supplementary statement he addressed the updated proposal and its potential adverse effects on the landscape values of the Poverty Bay coastal margin. It was his opinion that the proposed increase in stopbank levels would not adversely affect the landscape values associated with the coastal environment. This is because the stopbanks will "*continue to have no adverse impact on the visual drama of Te Kuri a Paoa, the natural values of Wherowhero and Waipaoa River mouth lagoons or natural character of the coastal edge*"<sup>12</sup>.
63. In relation to the effects on Poverty Bay (inland), Mr Slupski set out in his initial statement of evidence that the scale of the settled landscape, the prominence of the planted landscape, the moderating effect of trees and shelterbelts, and the use of the stopbanks for pasture, all work to integrate the stopbanks with its surrounds. In his supplementary statement he considered it was unlikely that the stopbanks, once constructed, would be perceived any differently to how they are now.

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<sup>12</sup> paragraph 5 of Mr Slupski's supplementary Statement

64. Mr Slupski also addressed the Ormond Bypass, and concluded that the proposed stopbank extension is unlikely to have any adverse effects on visual amenity or any other landscape values found nearby.
65. **Mrs Morgan** produced two sets of planning evidence, as well as a further planning assessment in relation to the updated proposal. She set out the relevant Plan provisions as well as assessing the effects, both positive and adverse, of the proposal for the upgrading of the flood protection scheme and the proposed cycleway/walkway.
66. In her supplementary evidence (to the updated proposal) she set out why, in her opinion, the updated proposal was within scope of the proposal as notified (I have addressed this matter earlier in the decision). She also set out that there was general agreement between her and Mr Whittaker in regards to most of the planning matters. She also addressed the agreement reached with the Wi Pere Trust.
67. Mrs Morgan addressed the cycleway/walkway setting out the matters raised by submitters in relation to it; including those in support and those in opposition. She stated that:

*“The development of the cycle trail component requires consent as a ‘discretionary’ activity. This type of activity status provides for activities that are appropriate to an area provided adverse effects can be appropriately managed or mitigated. As provided in my statement of evidence dated 21 November 2017 ‘the Tairāwhiti Plan does not explicitly provide for recreational trails and that it has been caught by the ‘catch-all’ rule 4.6.1(29) which provides for ‘activities not listed as ‘Permitted Activities’ but which comply with the General Standards’ as ‘discretionary’ activities. As such there is no policy guidance in the Plan that directly relates to recreational trails, although there are policies and objectives that seek to enhance amenity values and recreational access to lakes, river, wetland and their margins (RPS Objective B6.2.1, Objective B9.2.1 & Policy B9.2.1; Coastal Management Objective C3.5.2 and Policy C3.5.3); and that the proposal to provide public access via development of a trail network along the stopbanks is consistent with s6(d) matters of national importance of the RMA which is to provide for ‘the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers’.”<sup>13</sup> (Underlining is my emphasis)*

68. Mrs Morgan set out the main areas of concern for submitters opposed to the cycleway/walkway. These mostly related to the impact on privacy and the potential for reverse sensitivity issues (spray drift/ access and farm machinery on stopbanks) to occur, and the potential impact on landowner’s rural amenity and farming practices by having the public in close proximity to farmland.
69. It was her opinion that with the conditions that she recommended the cycleway/walkway proposal would be appropriate and any adverse effects, particularly in relation to the concerns of submitters, would be avoided and /or mitigated. It was also her opinion that granting the cycleway/walkway component of the project would realise the positive recreational benefits of this aspect of the proposal.

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<sup>13</sup> Mrs Morgan’s Supplementary Statement of Evidence – paragraph 110.

## Submitters

70. The submitters who presented at the hearing are listed above.
71. Mr Peacock provided two briefs of evidence in relation to his personal submission to the applications. Mr Peacock was a signatory to the (largely) agreed caucusing statement between the technical experts (in his capacity as the engineer representing the Wi Pere Trust).
72. In his supplementary statement Mr Peacock set out that in his submission he sought explanation on five questions that he had posed. He addressed these in the supplementary statement, much of which had been addressed as part of the updated modelling, the technical caucusing, the agreement with Wi Pere Trust and the written approvals from the owners of the other 'up-stream' properties.
73. He then discussed the issue of flood hazard; designated overflow vs. equal level of protection philosophy. This was the issue that Mr Peacock differed on in relation to the other experts. That said, in relation to equal protection vis-à-vis a designated overflows on both banks of the river so that both sides are treated equally and potential overflows over high stopbanks are avoided, Mr Peacock accepted this was outside of the consents sought. He stated in relation to this matter:

*"Now that it is considered to be outside the current application (clause 4.10 of the caucusing statement), it runs the risk of being forgotten or ignored in the future, which would be regrettable. Major flood control schemes such as the Waipaoa River FCS are only upgraded about every 50 or 60 years, so the opportunity to consider the merits of alternative flood hazard reduction measures and to adopt the most effective one at the concept stage, viz; before application for a resource consent, is very rare indeed."*<sup>14</sup>

74. Mr Pollard (and Mr McLanachan) and Mr McPhail raised similar matters in relation to the proposed cycleway/walkway (Mr Pollard was also opposed to the scale of the stopbanks and had set out his reasons in his submission).
75. Their collective concerns related to:
- Loss of privacy and the resulting loss of amenity;
  - Increased risk of burglary and security risk;
  - Disturbance of stock /disturbance to farm practices;
  - Health and safety of farming operations e.g. heavy machinery movement/crop contamination/ reverse sensitivity e.g. sprays;
  - Impact on grazing leases;
  - Dogs, potentially attacking stock and disease threat;
  - Increase in rubbish; and
  - Lack of toilet facilities (and the impact if people defecate in the cropping areas).
76. Mr Pollard and Mr McPhail (who was not opposed to a cycleway/walkway per-se) set out the potential effects on residential amenity (Mr Pollard) and to their productive farming/horticultural operations. Mr McPhail set out the implications of "product contamination" from people, domestic pets (dogs) and rubbish. He also

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<sup>14</sup> Mr Peacock's Supplementary Statement –paragraph 29.

addressed the potential for increased health and safety breaches/concerns, as well as theft due to the increase in public access along the stock banks (particularly as this would provide access to the more remote/rear parts of the farm). They were concerned about reverse sensitivity effects in relation to their productive farming operations.

77. Mr Pollard, Mr McLanachan and Mr McPhail also did not think it would be possible or practicable for the Council to monitor the cycleway/walkway in terms of the issues that they had raised. They also did not think signage and bylaws (regarding not accessing private property, closing the track during (say) lambing time, prohibiting or controlling dogs and rubbish) would be effective given the extent and remoteness of some of the stopbanks, and that access would be available 7 days a week 24 hours a day.
78. Also, the submitters did not consider there was sufficient detail to fully understand the location and operation of the track, and mitigation offered in relation to the effects set out in the submissions and in Mrs Morgan's planning evidence. In this respect the submitters considered granting the proposal and then having the Council (as consent holder ) develop a "Cycleway Network Plan" and a "Cycleway Construction Network Plan" (as set out in the recommended conditions) was essentially giving an approval in principal, and then attempting to sort out/agree the operation and mitigation details with affected landowners.
79. **Mr Pakekura**, the Chairman of the Wi Pere Trust tabled a supplementary statement of evidence. This set out that the Trust had reached agreement with the Applicant, and attached a set of conditions that the Trust sought to have imposed should the consents be granted.
80. The **Applicant's Reply Statement**, received on the 28 September 2018, addressed:
  - The Engineering and construction issues, including:
    - Equal level of protection and overflow at Ford Road;
    - Reasons for the Applicant seeking a 4m top width;
    - Whether ongoing maintenance is sought as part of the Application; and
    - Construction sequencing.
  - Issues raised by submitters in relation to cycleway component, including:
    - Health and safety issues raised in submissions; and reverse sensitivity;
    - Use of s128 RMA process for review of the cycleway component; and
    - Leasing and licensing arrangements.
  - Discussions with parties including:
    - Negotiations with Tairawhiti Roads in relation to bridge infrastructure (GDC as roading authority/NZTA); and
    - Confirmation of agreement with Mr Michael Newman (an upstream property owner ).
  - Planning matters including:
    - Description of relevant rules;
    - Enabling objectives in the Tairawhiti Plan and Part 2 matters; and
    - A final set of draft conditions that had been agreed with the Council officers.

## Principal issues in contention

81. With respect to the flood control scheme, there was little in contention between the technical experts<sup>15</sup> having agreed most things at an expert conferencing session on the 8 August 2018. An outstanding matter related to a difference of opinion about the design philosophy regarding equal protection though-out the scheme.
82. Mr Peacock considered that incorporating a spillway into the scheme's design was preferable, while Mr Goodier and Mr Kouvelis did not. It was their view that the design philosophy of equal protection vs. a dedicated spillway needed the consideration of factors outside the current application. This has been addressed earlier in the summary of evidence, and Mr Peacock accepted that a designated spill was not part of the application.
83. Wi Pere Trust had 'settled' the matters they were concerned about; having reached an agreement with the Applicant as to appropriate conditions of consent should consent be granted. This was set out in the supplementary evidence of Mr Haronga; the Trust's Chairman.
84. Some submitters opposed the upgrade. Mr Pollard in his submission, which he reiterated at the hearing, was concerned at the scale of the stopbanks, mainly from a cost perspective. It was his view the existing banks were "*well established with sufficient width and structural strength to withstand large flood events, as has been historically proven*"<sup>16</sup>.
85. Mr Peacock and Mr Pollard raised concerns about the proposed 4m crest width of the stopbanks. Other issues concerning maintenance and construction sequencing were also raised; and I have addressed these later in the decision.
86. In terms of the planning aspects of both the flood control scheme and the cycleway/walkway proposal, there was general agreement between Mrs Morgan and Mr Whittaker in relation the relevant planning provisions of the Tairāwhiti Plan and to the effects of the proposal. Also, an agreed set of conditions between the Applicant and the Council was filed as part of Ms Zame's Reply Statement, to be applied should the consents be granted.
87. Overall there was little remaining contention with the flood control scheme between the Applicant, Council and most submitters (including Wi Pere Trust), with those parties accepting that it was necessary and desirable and would, subject to the recommended consent conditions, have positive effects. That is - the proposal would achieve a more resilient stopbank structure and to provide flood control up to a 2090 1% AEP design event.
88. The area of most contention related to the construction and operation of the proposed cycleway/walkway. The main concern for submitters opposed to the cycleway/walkway related to impact on their privacy and the potential for reverse sensitivity issues (spray drift/ access and farm machinery on stopbanks) and potential impact on landowner's rural amenity and farming practices by having the public in close proximity to farmland.

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<sup>15</sup> Mr Goodier, Mr Kouvelis and Mr Peacock.

<sup>16</sup> Mr Pollard's submission at A2.

89. However, also of concern was the lack of detail about the cycleway/walkway and its location. The Applicant, at this stage, has not identified the actual location of the cycleway/walkway network and this is to be undertaken in conjunction with: community interest; user demand; and any necessary private landowner negotiations/agreements.
90. Landowner negotiation would be particularly important as any additional use of the stopbanks located on private property would need their approval. Without that approval, areas within the proposed network would not be connected or developed. This of itself would potentially impact the scale of effects to that portion of the cycleway/walkway that could be developed (eg more people on the scaled back cycleway/walkway).
91. In summary, the concerns are that without greater level of detail and certainty as to what is proposed, its operation and how effects will be mitigated, it is not possible to determine the actual or potential effects that may arise from the cycleway/walkway operation, and what mitigations may be acceptable and/or appropriate.

## **Main findings on the principal issues in contention and reasons**

### Flood Control Scheme

92. Extensive information and evidence was provided as part of the application. This included detailed initial modelling and the updated and re-run models. The outcome of the technical caucusing was that the modelling was 'fit for purpose', robust and supported the applications for the upgrade scheme. There was also engineering, landscape/visual and planning evidence that 'supported' the proposal.
93. Wi Pere Trust, a major landholder and submitter, had reached an agreement with the Applicant as to how the concerns for its land and property had been satisfactorily addressed and adverse effects mitigated.
94. Mr Peacock also agreed with the need to the upgraded flood protection works, and while would have preferred a design with a designated spillway/overflow, accepted this was not part of the design.
95. The issue of the 4m crest width was raised in submissions and at the hearing. Mr Peacock originally submitted that a lesser top width for upgrading would be desirable (and less expensive) but conceded at the hearing that a 4m crest width has practical applications, so he would not oppose it. Mr Pollard also raised an issue about the proposed 4m crest width considering it unnecessary (and more expensive), and whether it was just to provide for the cycleway and was particularly concerned about the use of council vehicles for maintenance purposes.
96. Mr Daykin confirmed at the hearing that the Applicant sought a 4m crest width predominantly for stopbank design reasons, but that the width also had the advantage of enabling council vehicles to safely undertake maintenance inspections. However, the use of such vehicles would be infrequent and would only be for maintenance inspection purposes. He confirmed that the cycleway would be approximately 2.5m in width, but that the additional width was not to simply accommodate the cycleway.

97. Appendix 4 to the original application refers to the recommendation for a 4m crest width to provide a more robust structure, provide a greater factor of safety against piping and slumping failure, to better withstand a prolonged flood peak, and to provide greater safety for maintenance purposes<sup>17</sup>. In addition, as described by Mr Kouvelis and Mr Daykin at the hearing, it has the additional benefit of providing for future-proofing of the scheme<sup>18</sup>.
98. Given the reasons set out above, and Mr Slupski's evidence regarding the landscape effects (addressed below), I agree that the 4m crest width is appropriate.
99. With regards to operational maintenance of the stopbanks, Mr Kouvelis queried whether this had been applied for, and whether that should be incorporated into the consent if granted. As confirmed by Mrs Morgan at the hearing, the applicant has not sought consent for ongoing maintenance activities as part of the application.
100. As set out at the hearing (and addressed in the Reply Statement), the Applicant anticipates that in most cases any ongoing maintenance activities on the stopbanks could be undertaken as a permitted activity<sup>19</sup>. If further consents are required by the Applicant to undertake maintenance activities in the future, then the relevant consents would need to be sought on completion of the project.
101. Mr Peacock referred at the hearing to the sequencing of construction, and Council's policy regarding protecting the integrity of the existing scheme, which he asserted may require rock reinforcing work to be undertaken first. He accepted in response to questions that this was an operational issue for the Applicant.
102. The Applicant's position in relation to construction sequencing was set out in the evidence of Mr Ruifrok<sup>20</sup>; that essentially this is a matter for the Applicant [Consent Holder], and that a hierarchical risk based approach has been used to define construction sequencing. I agree.
103. Overall, at the hearing, there was little or no contention between the technical experts of the Applicant, Council and submitters. I accept that expert evidence.
104. With respect to the planning and landscape evidence, again extensive information and evidence was provided. This included the application (and AEE, including a landscape assessment), the updated planning assessment in relation to the updated application, two section 42A reports with technical input from the Council's experts (the second addressing the updated application), as well as expert evidence and supplementary statements in relation to the updated application.
105. Mr Slupski's evidence regarding the landscape effects of the flood protection scheme was not contested. His expert opinions have been addressed in the Summary of Evidence section earlier. I accept and agree with his evidence and any landscape/visual amenity effects will either have no adverse effects (in some locations) or no more than minor adverse effects.

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<sup>17</sup> Application, Appendix 4, Section 4.1 Stopbank Integrity, page 9.

<sup>18</sup> Refer s92 response dated 26 September 2017 at 2(v).

<sup>19</sup> Rule 6.3.2(3) of the Tairāwhiti Plan.

<sup>20</sup> Mr Ruifrok's evidence in chief (21 November 2017) at paragraphs 33-38, and Supplementary Evidence (3 September 2018) at paragraphs 53-57.

106. Both Mr Whittaker and Mrs Morgan agreed that the Tairāwhiti Plan addressed all of the relevant 'higher order' statutory planning documents. Both also agreed, as set out in the section 42A report, AEE and evidence, that the proposal, subject to an appropriate suit of conditions, would be consistent with the relevant objectives and policies of the Tairāwhiti Plan. I agree.
107. In terms of the paragraph above, I accept that the relevant objectives and policies of the Tairāwhiti Plan in relation to this part of the application were fully addressed in the Applicant's AEE and in the reporting officer's section 42A reports (and in evidence). Given this, rather than repeating them, I have pursuant to section 113 (3) of the RMA adopted that material as part of this decision.
108. Furthermore, and importantly, the proposal will recognise and provide for the management of significance risks from natural hazards; a matter of national importance under section 6 of the RMA.
109. The effects, both positive and adverse of the upgrading of the flood protection scheme, were fully detailed in the application documents and evidence. The expert evidence is that these effects can be appropriately avoided, remedied or mitigated by the nature of the project, how it will be constructed, modern practices (e.g. the inclusion of fish passage) as well as the suite of (agreed) conditions, including those in relation to the Wi Pere Trust land.
110. Given the high level of agreement between the parties regarding the nature and scale of the effects, and how they are to be addressed, including the conditions of consent, there is little point in repeating all of that material. I agree that with the conditions of consent offered by the Applicant (and agreed to by the Council Officers) and that these will ensure that the adverse effects will be avoided, remedied or mitigated.
111. Overall, I accept that the upgrading of the flood protection scheme is critically important to the Gisborne region. The proposed upgrade to the existing stopbanks will improve resilience against flood events and account for climate change. Granting this consent will enable the scheme to better protect the 10,000 hectares of Gisborne's highly productive land as well as the urban areas of Gisborne city, Makaraka and Ormond
112. In respect of the above paragraph, the proposal would promote the sustainable management of Gisborne's natural and physical resources by "*managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety*"<sup>21</sup>. As already set out the adverse effects on the environment will be avoided, remedied or mitigated.

#### Cycleway/Walkway

113. GDC, as part of the application has sought consent to establish and operate a cycleway/walkway. Section 4.2 Public Access of application document<sup>22</sup> states:

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<sup>21</sup> Section 5 - Purpose - of the RMA.

<sup>22</sup> Dated June 2017 - pg 19.

*As identified, GDC also has aspirations to provide public access via the development of walking and cycling trails along the WFCS corridor. Such trails will only be developed on those sections of the WFCS that are publicly owned, or where successful negotiations have been entered into with private land owners for this purpose.*

*The trail will predominantly run along the crest of the bank, but may drop down either side of the stopbank area to avoid neighbouring houses, or to create interest along the route. It will generally be 2.5m wide and constructed using compacted material.*

*Where feasible, construction of the trail will be done at the same time as the stopbank upgrade to save on costs<sup>23</sup>.*

114. The application document shows a typical stopbank trail development<sup>24</sup>. This was to enable the public (and potential submitters) to understand the general nature of what the cycleway/walkway would look like.

115. I have considered the effects of the cycleway/walkway component under the following headings:

- Landscape effects;
- Public access and recreation use; and
- The potential effects on landowners and those with farming operations close to the stopbanks (including reverse sensitivity effects).

#### Landscape effects

116. Mr Slupski's Landscape Statement submitted with this application set out that visually the most prominent aspects of the proposed cycleway will be through:

- the movement of cyclists and walkers along the crest of the stopbanks, associated structures such as trail markers and vehicle barriers; and
- where the cycleway drops back down to selected road access points.

117. As set out in the Landscape Statement and in his evidence, Mr Slupski considered that from a landscape perspective, any adverse effects would be mitigated. This would be by suitable landscaping where the trail accesses the stopbank within the Poverty Bay Coastal Margin and dropping the cycle/walk trail off the stopbank crest and down to the riverside toe so that there is no visual impact or adverse effect on dwellings located adjacent to the existing stopbank (on the landward side).

118. I agree with Mr Slupski's analysis and his conclusions. Any adverse landscape effects would be minor in relation to the cycleway/walkway, and the effects could be avoided or mitigated as set out by Mr Slupski and the conditions offered by the Applicant.

#### Public access and recreation use

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<sup>23</sup> Construction of the stopbanks is estimated to be up to 13 years, but the Applicant has offered a 5 year lapse period for the walkway/cycleway (discussed later in the decision).

<sup>24</sup> Figure 9, page 19 of the application document

119. Currently, public access along the stopbanks is 'discouraged' by the limited access points and some parts passing through privately owned land. As set in the application and Mrs Morgan's evidence, the development of cycling and walking trails would likely bring positive social wellbeing and economic effects to the District. This would be through the provision of accessible low-cost physical recreation opportunities that could be used by locals and visitors to the Region.
120. With respect to the cycleway/walkway Mrs Morgan accepted that there is no policy guidance in the Tairāwhiti Plan that directly relates to recreational trails. She did however point to the objectives and policies that seek to enhance amenity values and recreational access to lakes, river, wetland and their margins<sup>25</sup>. It was also her view that providing access by the trail network would be consistent with section 6(d) - matters of national importance of the RMA which is to provide for '*the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers*'<sup>26</sup>
121. I agree with Mrs Morgan in terms of the provisions quoted. However, I am not entirely convinced they are particularly relevant in this application such that they provide strong policy support for the cycleway/walkway. While the cycleway/walkway would in part provide access along the river corridor : - there are significant parts of the stopbanks which are a considerable distance from the river; some running through private land; with much of the land owned by GDC on the river side of the stopbanks licensed to others and used for rural production activities, such that access to and along the river itself is not possible.
122. I am clear that the cycleway/walkway would likely have positive public access and recreational benefits. However, I find that the cycleway/walkway can only 'rely' on the plan provisions, as outlined, for very general support.

The potential effects on landowners and those with farming operations close to the stopbanks (including reverse sensitivity effects)

123. The concerns of those landowners and those with farming operations close to the stopbanks were fully set out in the submissions, the Applicant's response (e.g. the 26 September 2017 document titled - Proposed Mitigation Measures/Options in Response to Submissions Received), the section 42A reports, and in evidence from the Applicant (Mrs Morgan). At the hearing the submitters Messrs Pollard, McLanachan and McPhail set out their concerns (which have been summarised in the Summary of Evidence earlier in this decision).
124. The Applicant accepted that mitigation was required for those who live and/or work near to the stopbank and the cycleway/walkway. The nature of that mitigation was set out in the Proposed Mitigation Measures/Options in Response to Submissions Received document. In summary this included: fencing, track location, planting/landscaping as well as signage at trail entry points outlining cycle trail users' responsibilities, including (but is not limited to):

- Exclusion of private motor vehicle, motorcycle or mopeds;

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<sup>25</sup> She referenced - RPS Objective B6.2.1, Objective B9.2.1 and Policy B9.2.1; Coastal Management Objective C3.5.2 and Policy C3.5.3.

<sup>26</sup> Mrs Morgan's Supplementary Statement of Evidence – paragraph 110.

- No dogs unless leashed;
- No littering or leaving of any rubbish;
- No leaving the trail to enter into private land; and
- No lighting fires or camping overnight.

125. The Applicant also offered that it (as consent holder) would maintain a register on any incidents or complaints notified to GDC regarding the use and operation of the cycleway/walkway. As set out by the Applicant, this register may be utilised as part of any information and material utilised to inform a section 128 review of consent conditions.

126. The Applicant also set out that if consent were granted it would then prepare (within 5 years) a "Cycleway Network Plan" confirming all sections of the WFCS that would be developed for public access and to show the proposed network and public access points.

127. In order to provide certainty for the public around the development of the cycleway component, the Applicant agreed to a lapse period of 5 years for the cycleway/walkway component of the application. In that time the Cycleway Network Plan must be submitted to the GDC and it would confirm which (if any) sections of the WFCS would be developed for public access.

128. The Applicant also offered a condition that requires the development of "Cycleway Construction Plan", which will provide:

- The route to be developed;
- Material to be used; and
- Results of consultation with adjacent landowners including identification and mitigation of any potential effects, including realignment, landscape mitigation or screening. The condition is clear that this relates to all directly adjoining landowners.

129. The submitters at the hearing were not convinced that granting consent now and then attempting to agree the details of the operation, function and 'mitigation package' was appropriate. They clearly set out the issues they faced if the cycleway/walkway was operating. These included the consequence of peoples actions such as crop contamination, dogs not under control, property damage and/or thief, would likely be significant, on-going and not to be under estimated.

130. They were not convinced that conditions offered could be relied upon to address their concerns, as they required all people using the cycleway/walkway to comply with them at all times, which they thought unlikely. Also, that due to the remote and rural location of the stopbanks, monitoring and immediate enforcement was unlikely or impossible to occur.

131. The issue before me is:

- A. Is it appropriate to grant consent now and impose the conditions which require the consent holder to then discuss/consult on the specific

mitigations to address submitter and landowner concerns (e.g. the specifics about: the type and height of fencing, track location, landscaping, as well as other matters raised by the submitters), and negotiate with private landowners; or

B Refuse consent as the application is not sufficiently developed to fully understand the proposal and the specific 'mitigation package' to each affected person; as well as seeking landowner approval where the stopbanks are on private land so that the full extent of the cycleway/walkway was known.

132. It is my determination that B is more appropriate than A. The reasons for this are set out below.

133. I accept the cycleway/walkway per se is likely to be an appropriate activity, and as set out above, would have a range of positive social and economic benefits. However, the proposal as advanced by the Applicant is, in my view, more akin to a general concept, with most of the detail to be developed and resolved post consent.

134. No Council evidence was prepared and presented about the nature, extent and operation of the cycleway/ walkway such that a clear understanding of it could be understood. I accept that evidence from Mrs Morgan and Mr Slupski was presented, but addressed planning and landscape matters. This was in stark contrast to the amount of detailed evidence with respect to the stopbank upgrade. Due to the lack of evidence, it was difficult to get beyond the generalities of the impact and effects the cycleway/walkway could have and what the appropriate mitigation may be.

135. As part of the application material I was provided with a schedule of land ownership and land tenure plans. While I accept that the Council owns much of the land on which the stopbanks are located, significant portions are privately owned. While there is no limitation in the RMA to granting consent over land not owned by the Applicant, without landowner approval any consent could not be exercised.

136. Given the land tenure situation (the amount of land not owned by the Council) it is not possible to know the actual extent of the proposed cycleway/walkway. I accept that if land owner consent cannot be obtained a more limited cycleway/walkway could still be developed on that land owned by the Council. The impact of this is that a greater number of people could be on the more limited cycleway/walkway, and potentially exacerbating the effects highlighted by Messrs Pollard, McLanachan and McPhail. In short, the scale of effects cannot not be determined (and mitigated) until the actual extent of the possible cycleway/walkway is known.

137. The updated stopbank proposal has sought a construction period of 13 years. While it is accepted that the Applicant has offered a five year consent lapse period in which time the Cycleway Network Plan would confirm which (if any) sections of the WFCS would be developed, given the construction period, the completion of any cycleway/walkway is some years away. In my view, consent should be sought once a Cycleway Network Plan had been completed and construction of the

stopbanks nearer completion. This would provide much greater certainty to those potentially affected by the cycleway/walkway.

138. Seeking consent at a later date (e.g. after the completion of a Cycleway Network Plan and a Cycleway Construction Plan) would allow time for discussions, and potential agreements reached, with landowners and other potentially affected parties. This would likely include a specific proposal with more details on the nature, function and operation (e.g. entry and exit points and 'operating rules') of the cycleway/walkway. It would also enable more detailed and specific mitigation to be developed and agreed, including route location, fencing, landscaping, and other matters raised by those people affected by the proposal.
139. For the reasons set out above, in terms of the sustainable management purpose of the RMA, notwithstanding the conditions offered by the Applicant, it is more appropriate in this instance to refuse rather than grant consent.

## Decision

140. In exercising my delegation under section 34A of the RMA and having regard to the foregoing matters, I have determined that the resource consent be **GRANTED** for the to upgrade to the Waipaoa Flood Control Scheme but **REFUSED** in terms of developing a cycleway/walkway along the stopbank network.
141. Conditions have been imposed in relation to the consent granted and these are attached as Schedule 1.

## Conditions

See Schedule 1.



Greg Hill  
Chairperson

Date 25 October 2018