



## PROACTIVE RELEASE COVERSHEET

<b>Minister</b>	Hon Penny Simmonds	<b>Portfolio</b>	Environment
<b>Name of package</b>	Proactive Release – Severe Weather Emergency Recovery (Auckland Flood Resilience Works) Order 2024	<b>Date to be published</b>	26/11/2024

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
17 July 2024	Cabinet paper (CAB-452): Proposed Order in Council under the Severe Weather Emergency Recovery Legislation Act 2023 – Auckland flood recovery works Order in Council	Ministry for the Environment
17 July 2024	CAB-452 Appendix 1 Draft engagement plan for the proposed Auckland Council flood recovery works Order in Council	Ministry for the Environment
17 July 2024	CAB-452 Appendix 2 Context map and the proposed project works locations	Ministry for the Environment
17 July 2024	CAB-452 Appendix 3 Interim Regulatory Impact Statement: Severe Weather Emergency Recovery Legislation (Auckland Council flood recovery works) Order 2024	Ministry for the Environment
9 October 2024	Cabinet paper (CAB-476): Severe Weather Emergency Recovery (Auckland Flood Resilience Works) Order 2024	Ministry for the Environment
9 October 2024	CAB-476 Appendix 2 Overview of feedback received from public engagement	Ministry for the Environment
9 October 2024	CAB-476 Appendix 3 Regulatory Impact Statement Severe Weather Emergency Recovery (Auckland Flood Resilience Works) Order 2024	Ministry for the Environment

### Information redacted **YES**

Any information redacted in this document is redacted in accordance with the Ministry for the Environment's policy on proactive release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

### Summary of reasons for redaction

Some information has been withheld from *CAB-452 Proposed Order in Council under the Severe Weather Emergency Recovery Legislation Act 2023 – Auckland flood recovery works* and *CAB-476 Severe Weather Emergency Recovery (Auckland Flood Resilience Works) Order 2024* under Section 9(2)(h) of the Official Information Act to maintain legal professional privilege. Some information has been withheld from *CAB-476 Appendix 2 Overview of feedback received from public engagement* under Section 9(2)(a) of the Official Information Act to protect the

privacy of natural persons.

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**In-Confidence**

Office of the Minister for the Environment  
Chair, Cabinet Economic Policy Committee

**Proposed Order in Council under the Severe Weather Emergency Recovery Legislation Act 2023 – Auckland Council flood recovery works**

**Proposal**

- 1 The Auckland Anniversary floods, and Cyclone Gabrielle in 2023 created significant loss and damage throughout the Auckland region, particularly in Māngere, South Auckland. The resulting flooding caused significant damage to property and has left some homeowners uncertain about the continuing level of flood risk to their homes. Central government support is needed to enable Auckland Council to replace and upgrade infrastructure and enhance flood resilience in the catchments of Te Ararata and Harania, South Auckland.
- 2 This paper seeks Cabinet’s agreement to develop an Order in Council (OIC) under the Severe Weather Emergency Recovery Legislation Act 2023 (SWERLA) to modify the Resource Management Act 1991 (RMA).

**Relation to government priorities**

- 3 The Minister for Emergency Management Recovery set a clear expectation from the Government<sup>1</sup>, that the recovery process is to be accelerated following a visit to areas affected by Cyclone Gabrielle in March 2024.
- 4 The proposed OIC would enable a sped up consenting process for specific flood recovery works that will mitigate risk to life and property from flooding and provide clarity to homeowners on the flood risk at their properties. This would be the equivalent of these homes moving from a Category 2C to Category 1.
- 5 The proposal in this paper reflects the priorities outlined in the Government’s plan for a faster and fairer disaster recovery to expedite the consenting process and remove red tape to speed up the rebuild.

**Executive Summary**

- 6 In January and February 2023, flooding caused by heavy rain events and Cyclone Gabrielle caused significant damage to homes and infrastructure throughout Auckland.
- 7 Flooding was particularly devastating around the urban Harania and Te Ararata catchments in Māngere. The area, comprises of around 850 ha of primarily residential land, includes 376 properties that are preliminarily classified as being affected by the weather events. Applying the severe weather categorisation framework, Auckland Council has determined that Category 2C properties will be categorized as Category 3 unless community-level risk mitigation works can be achieved within two years. The

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<sup>1</sup> Letter to Auckland Mayor, Wayne Brown dated 26 March 2024.

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Council is seeking an OIC to allow for expedited consent processes for these works, which will mean Category 2C property owners are not left in longer situations of intolerable risk than other categories, and that the project works can begin in late 2024/early 2025. The rationale for using an OIC to accelerate consenting processes, and therefore allow completion of the project works sooner, is to allow landowners and communities to feel safer, quicker. Auckland Council's Māngere-Ōtāhuhu Local Board have resolved to support the OIC, and the Council's Transport and Infrastructure Committee have noted this support and resolved to support the comprehensive flood resilience projects for Te Ararata and Harania catchments, noting that the OIC is subject to Ministerial recommendations.

- 8 Auckland Council has developed a proposal for flood recovery project works ('project works') in the Harania and Te Aratata catchments to mitigate the risks to life and property, and to increase flood resilience across the community. The works are in the concept and planning stages and are expected to include:
  - 8.1 the upgrading of flood-resilience infrastructure
  - 8.2 reducing blockage risk by moving bridges and replacing culverts and dams
  - 8.3 increasing flood conveyance in both creeks by channel realignment, mangrove clearance and dredging in the coastal marine area
  - 8.4 relocation of pipes and services; and accessory works to enable construction.
- 9 The flood protection work this OIC will enable will be co-funded by the Crown and Auckland Council, as indicated in the cost-sharing arrangements that were negotiated as a part of the Future of Severely Affected Locations programme. There is a Crown Funding Agreement in place that covers these risk mitigation works, along with other recovery projects including Category 3 buyouts and roading works.
- 10 The SWERLA enables certain legislation to be amended temporarily via an OIC to exempt, modify, or extend statutory obligations where necessary to support recovery in the areas affected by the severe weather events.
- 11 The project works will require resource consents under the RMA through the Auckland Unitary Plan (AUP)<sup>2</sup>. These consents will be complex and require a streamlined process to ensure that the works can be completed in time to enable recovery in accordance with the instruction from the Minister for Emergency Management Recovery. Ministry for the Environment (MfE) officials have reviewed all potential consenting pathways and have determined that an OIC is necessary to ensure that the works are completed in the minimum length of time.
- 12 The proposed OIC will classify the project works as a controlled activity under the RMA, enabling consent to be granted on a non-notified basis. The OIC will also limit appeal rights, with no right of appeal to the Environment Court. These two changes will provide certainty and swiftness to the flood recovery works consenting.

### Background

- 13 SWERLA established a mechanism for legislation to be amended via OIC to assist communities and local authorities affected by the severe weather events to respond

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<sup>2</sup> And potentially under Resource Management (National Environmental Standards for Freshwater) Regulations 2020 and the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.

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to, and recover from, the impacts of the 2023 severe weather events. There is a comprehensive set of safeguards provided in SWERLA to ensure the OIC mechanism is used appropriately.

14 Flooding during the severe weather events has caused significant damage to homes in Māngere. Affected communities are bearing significant social and economic impacts as the safety of their homes remains unclear. The flooding has affected approximately 376 residential homes in Māngere, impacting homeowners and occupiers, businesses, tangata whenua, and economically vulnerable populations.

15 Auckland Council has requested an OIC to accelerate the recovery process. Auckland Council's Māngere-Ōtāhuhu Local Board resolved [MO/2024/71] to:

*“support an Order in Council to facilitate rapid project delivery addressing the urgent flood risks our community faces. Prompt action is vital to safeguard lives and properties”.*

16 Auckland Council's Transport and Infrastructure Committee resolved [TICCC/2024/74] to

*“a) support the comprehensive flood resilience projects for Te Ararata and Harania catchments....,*

*(b) note the feedback received from the Māngere-Ōtāhuhu local board for the project and request for an Order in Council,*

*(e) note that the Order in Council is subject to recommendation from the Minister for the Environment to the Governor-General to make an order under the Severe Weather Emergency Recovery Legislation Act 2023.”*

17 The works are part of the Council's Making Space for Water programme to reduce flood risk across the region and are a key action in Te Mahere Whakaroa mō Tāmaki Makaurau (the Tāmaki Makaurau Recovery Plan). The Making Space for Water programme includes works in twelve waterways across Auckland. Only the Te Ararata and Harania Creeks projects had advanced to a stage where they could be assessed against the statutory requirements of SWERLA.

18 The project works proposed in Te Ararata and Harania broadly include the following activities:

- installing debris capture structures upstream of Walmsley Road bridge
- regrading and naturalising portions of Te Ararata Stream
- Walmsley Road bridge replacement
- constructing a permanent maintenance platform and accessway to the Mahunga Drive culverts
- ongoing long term maintenance activities to maintain efficiency of the Mahunga Drive culverts including mangrove clearance and sediment removal/dredging
- removing dams (including embankments, culverts, and sections of pipe within the dam) at Tennessee Avenue and Blake Road

- constructing replacement wastewater pipes, including pipe bridges
- constructing a footbridge to maintain access across the stream
- relocating vulnerable services, including high voltage cables
- accessory works to enable construction
- potential mangrove removal and dredging of the watercourse and Coastal Marine Area to improve discharge flows.

## Analysis

### *Legislative effects of the proposed OIC*

- 19 The OIC will make modifications to the RMA to ensure that the project works can be completed in the minimum length of time.

### *Changes to the RMA*

- 20 The standard RMA consenting pathway presents risks of significant delay to obtaining consents for these works. The proposed works will require resource consents under the Auckland Unitary Plan, and potentially, national environmental standards<sup>3</sup>. Currently, the proposed works would require a range of complex consents which, when bundled together, would likely be classified as either a non-complying or discretionary activity and would likely be publicly notified and subject to appeal. Officials advise me that the best-case scenario under the standard consent pathway would see consents in place in 1-2 years at minimum (and potentially longer if appealed to the Environment Court).
- 21 I propose that the OIC would ensure that where a consent is required, these consents are processed as a controlled activity to provide certainty for the applicant and the public. I propose an amended lodgement process which requires a simpler set of lodgement documents but retains the ability of the decision maker to verify the application is complete. This will ensure the decision maker can issue the grant of consent within 30 working days. I propose that the decision maker be a delegated independent commissioner(s).
- 22 Using a controlled activity status will ensure that any adverse environmental effects are appropriately managed through a set of relevant conditions that may be imposed on each consent. If an activity is permitted under the RMA, it will remain permitted under the OIC.
- 23 The proposed OIC would also limit appeals, so that once a decision is made by the consent authority, no further time is spent litigating that decision in the Environment Court.

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<sup>3</sup> Potentially under the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 and the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.

*Timeframes*

- 24 I propose that the OIC comes into force the day after Royal Assent and expires on 31 March 2028. This duration will accommodate for any slippage in construction. It is also the maximum time for an OIC as SWERLA expires on 31 March 2028.

*Limited public participation and decision-making processes*

- 25 Under the standard RMA consenting process, the project works will require a range of complex consents and are likely to be publicly notified.
- 26 I propose this OIC should instead provide certain persons with the opportunity to comment on consent applications, but not confer any submission or appeal rights. Judicial review will remain available. This is consistent with the approach taken in prior OICs under SWERLA, including the Severe Weather Emergency Recovery (Waka Kotahi New Zealand Transport Agency) Order 2023 and the Severe Weather Emergency Recovery (Hawke's Bay Flood Protection Works) Order 2024.
- 27 This process would require the consent authority, within five days of a consent application being lodged, to notify relevant: iwi, hapū and Post-Settlement Governance Entities; adjacent landowners and occupiers; network utility operators and requiring authorities; any other persons the consent authority considers appropriate (with an interest greater than the general public), and those with interests in the coastal marine area.
- 28 These persons will be invited to make written comments on the application within 10 working days. This timeframe is necessarily short to ensure the commencement of the project works is not unduly delayed. Following engagement, the consent authority will summarise the comments received and finalise its consent decision.

*Interface with the Fast-Track Approvals Bill*

- 29 The Fast Track Approvals Bill was introduced on 7 March 2024, and is currently before the Environment Committee. If enacted, the fast-track consenting regime could provide an alternative consenting pathway to that provided under this proposed OIC. Under section 12 of SWERLA, OICs must be kept under review to determine whether they continue to be necessary or desirable and not broader than necessary to achieve the purposes of SWERLA. At the next review in July 2025 this OIC can be compared to the Fast Track Act to determine if it is still required.

**Environmental effects of the proposal under the Resource Management Act**

- 30 Under section 8(1)(e) of SWERLA, if an OIC relates to the RMA, I must consider:
- i. the effects on the environment that could occur as a result of the OIC, and
  - ii. whether any adverse effect can be avoided, remedied, or mitigated.
- 31 I am proposing a controlled activity status for the project works, which will allow the management of the environmental effects of the activities through conditions on the consents.
- 32 I propose the OIC include schedules setting out the consent conditions and matters of control. The consent authority may impose conditions set out in the schedule or use the matters of control to amend or add conditions in order to avoid, remedy or mitigate

adverse environmental effects (including effects on culturally significant sites). This will give the applicant, iwi/hapū and other interested parties certainty at the outset on conditions. The consent authority will be Auckland Council, acting independently of its other role as asset manager and applicant. To manage any perceived conflict of interest I propose that the decision maker on the consents be a delegated independent commissioner(s). The consent authority will be responsible for monitoring and compliance.

### **Treaty of Waitangi considerations**

- 33 The proposed OIC will remove or alter the ability for Māori (as well as the public more generally) to provide input into decisions and outcomes under the RMA relating to the project works. However, officials consider that the project works may also provide benefit for Māori in the region by ensuring their communities are better protected from future flood events.
- 34 The proposed OIC will impact some existing Treaty settlement commitments, rights of applicants under the Marine and Coastal Area (Takutai Moana) Act 2011 (the Takutai Moana Act), and Māori rights and interests more generally.
- 35 Officials have identified existing statutory acknowledgement areas for iwi in the areas where the project works will occur (see para 45 below).
- 36 Undertaking engagement with iwi and Māori who have interests in the area, on this proposed OIC will help manage relationship risks, as will the proposed extension of the statutory engagement of three working days to 19 working days. A draft engagement plan with further detail can be found at Appendix 1, and Appendix 2 shows the context map and the proposed project works locations.

### **Cost-of-living Implications**

- 37 The proposed OIC aims to reduce the significant social and economic costs caused by flooding during the severe weather events. Expediting the consent process will allow for flood recovery works to proceed sooner, providing certainty to homeowners and local businesses that work to alleviate flood risk will begin as soon as possible.

### **Financial Implications**

- 38 The projects that this OIC will enable are covered by the Crown Funding Agreement between Auckland Council and the Crown.

### **Legislative Implications**

- 39 This proposal is for a new OIC to be made under SWERLA. Section 7 of SWERLA enables OICs to be made for the purposes of SWERLA and allow exemptions from, modifications of, or extensions to provisions in legislation listed in Schedule 2 of the Act, which includes the RMA.
- 40 OICs can only be made where the Minister responsible is satisfied it is reasonably necessary or desirable for one or more purposes of SWERLA. I am satisfied the proposal meets these requirements sufficiently to be progressed to the next stage of development. When I return to Cabinet in October with the final OIC I will confirm if these statutory requirements have been met.



41 The project works could also require permits and authorisations under legislation administered by the Department of Conservation (DOC). Although no need for permissions has been identified to date, DOC has given an undertaking to prioritise processing of any applications related to the flood recovery works. If necessary, a memorandum of understanding between the Auckland Council and DOC could be used to ensure that this prioritisation process works smoothly. It is expected that, if required, this memorandum of understanding would mean that the OIC does not need to make any changes to the Conservation Act 1987.

*Advice from the Crown Law Office [Legally Privileged]*

s 9(2)(h) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

s 9(2)(h)

[Redacted]

### Regulatory Impact Statement

47 The Ministry for Regulation and MfE have agreed that an Interim RIS will be provided to support this Cabinet paper and is attached as Appendix 3. A full RIS will then be provided later in the OIC process. A quality assurance panel with members from the Ministry for the Environment’s Regulatory Impact Analysis Team has reviewed the Interim RIS. The panel considers that it **meets** the Quality Assurance criteria. The QA panel notes that the Interim RIS is comprehensive, well-written and in response to a clear need, with risks and constraints clearly defined and discussed.

### Climate Implications of Policy Assessment

48 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal, as the emissions impacts are indirect and the threshold for significance is not met. MfE has provided a list of anticipated environmental effects from the flood recovery works. None of these environmental effects are directly related to emissions, although the CIPA team notes that there will be some indirect emissions impacts because of construction. Overall, the emissions impact of this proposal would be indirect, and it is not possible to quantify.

### Population Implications

49 Streamlining the consenting process for flood risk mitigation and resilience works in the two project locations will provide benefits and certainty to affected communities in Māngere. The flood recovery works will ensure that the 376 properties within the catchment adversely affected by NIWE flooding can have certainty that their homes will be mitigated from future flooding.

### Human Rights

50 The proposal in this paper will likely engage section 27 of the New Zealand Bill of Rights Act 1990 (NZBORA). However, the requirements for certain people/entities to be given a chance to provide written comments on any resource consent application, and for those comments to be considered by a consent authority before deciding to issue a resource consent, likely ensures that the rights affirmed by s 27(1) of NZBORA can be exercised. In so far as the proposal limits rights affirmed by s 27(1) of NZBORA,

s 9(2)(h)

## IN CONFIDENCE

I consider the proposal is a justified limit on the rights and freedoms under NZBORA for the following reasons:

- 50.1 It is necessary to modify the public and limited notification processes because it will not be possible to secure all necessary resource consent processes in the required timeframes for the project works if the usual processes under the RMA apply. In particular, the timeframes associated with the RMA submission process (including notification, public submissions, and hearings) would prevent consents from being obtained in the required timeframe.
- 50.2 In light of the ongoing risk to persons and properties it is desirable for the works to be undertaken as expeditiously as possible.
- 50.3 The rights for persons to seek a judicial review are unaffected by the proposed OIC.

### Use of external Resources

- 51 No external resources were used in the preparation of this paper.

### Consultation

- 52 SWERLA requires engagement on OIC proposals. Section 9 of SWERLA sets out that the Minister must make information about the OIC available to the persons the Minister considers appropriate and the public generally and invite written comments. The Minister must then have regard to those comments. The engagement plan provided in Appendix 1 sets out the approach to engagement for this proposal.
- 53 Officials from MfE have worked closely with the Auckland Council (including the Tāmaki Makaurau Recovery Office) and the Cyclone Recovery Unit (CRU) in scoping the policy for this proposed OIC.
- 54 In the process of developing this policy advice, feedback was sought from CRU <sup>§ 9(2)(h)</sup> [REDACTED]. The proposal in this paper reflects changes suggested from those discussions.
- 55 MfE engaged with the Department of Prime Minister and Cabinet (both the Policy Advisory Group and the CRU), the Ministry for Primary Industries, the Ministry of Business, Innovation and Employment, the Ministry of Housing and Urban Development, the Ministry of Transport, the Ministry for Regulation, the Ministry for Culture and Heritage, Te Puni Kōkiri, the Department of Conservation, the Office for Māori Crown Relations - Te Arawhiti, Land Information New Zealand, and the Department of Internal Affairs on this Cabinet paper. The agencies supported the substance of the proposal and sought minor changes relating to background context, proposed works descriptions, details of Council support for the OIC and engagement processes.

### Communications

- 56 Subject to Cabinet approval, officials will undertake statutory engagement on the proposal from 30 July to 23 August 2024, as outlined in Appendix 1.

### Proactive Release

- 57 I intend to proactively release this Cabinet paper within 30 days of final Cabinet decisions on the proposed OIC.

## Recommendations

The Minister for the Environment recommends that the Committee:

1. **note** that the Severe Weather Emergency Recovery Legislation Act 2023 (SWERLA) established a mechanism for legislation to be amended via Order in Council (OIC) to assist communities and local authorities affected by the 2023 severe weather events to respond to, and recover from, the impacts of the severe weather events
2. **note** that I propose an OIC to provide a streamlined consenting process under the Resource Management Act 1991 (RMA) to assist communities in Māngere to respond to, and recover from the impacts of the severe weather events
3. **note** the proposed OIC would streamline RMA consenting processes, and that doing so will support the economic and social recovery of the Auckland region
4. **note** that the Māngere-Ōtāhuhu Local Board have resolved to support the OIC, and the Auckland Council's Transport and Infrastructure Committee have noted this support and resolved to support the comprehensive flood resilience projects for Te Ararata and Harania catchments, noting that the OIC is subject to Ministerial recommendations
5. **agree** for the purpose of issuing drafting instructions to the Parliamentary Counsel Office (PCO), to develop an OIC under the SWERLA to amend the RMA to:
  - 5.1 classify flood recovery activities in the catchments of Te Ararata and Harania, South Auckland, that are not already classed as permitted, as controlled activities (this does not extend to prohibited activities),
  - 5.2 provide a streamlined process for controlled activity resource consents with reduced resource consent application requirements,
  - 5.3 include a list of conditions and matters of control which will avoid, remedy, or mitigate adverse environmental effects,
  - 5.4 ensure that people would be able to provide comment on resource consent applications but there would be no appeal rights (however judicial review will still be available),
  - 5.5 require that the decision maker on the consents be a delegated independent commissioner(s)
6. **note** that no changes will be required to the Conservation Act 1987 as existing authorisation processes can be applied
7. **agree** that this OIC will be reviewed under section 12 of SWERLA in July 2025
8. **note** that if the Fast-Track Approvals Bill is enacted it may affect whether existing OICs are still needed. This can be addressed when the OIC is reviewed under section 12 of SWERLA
9. **agree** for the purpose of issuing drafting instructions to PCO that the OIC will apply from the day after Royal Assent and expire on 31 March 2028 when SWERLA expires

**IN CONFIDENCE**

10. **agree** for the purpose of issuing drafting instructions to PCO that the scope of the proposal is limited to resource consent applications for flood recovery works in the two project works locations (the Te Ararata Creek and Harania Creek catchments in Māngere, South Auckland) and lodged by Auckland Council
11. **authorise** the Minister for the Environment to:
  - 11.1 carry out public engagement on the OIC proposal,
  - 11.2 further refine or clarify any policy decisions relating to the proposed modification of the RMA in this paper, in a manner not inconsistent with this proposal, if required
12. **invite** the Minister for the Environment to issue drafting instructions to the PCO to give effect to these decisions
13. **note** that I will report back to Cabinet in October 2024 to seek agreement to submit the OIC to the Executive Council and Governor-General for enactment.

Authorised for lodgement  
Hon Penny Simmonds  
Minister for the Environment

**Appendix 1: Draft engagement plan for the proposed Auckland Council flood recovery works Order in Council**

# **Draft engagement plan for the proposed Auckland Council flood recovery works Order in Council.**

## **1. Purpose**

Orders in Council (OIC) allow a number of laws to be changed to help communities continue their recovery from the severe weather events of early 2023. At the request of Auckland Council (AC), the Ministry for the Environment - Manatū Mō te Taiao (the Ministry) will be consulting on the proposal to create a new OIC in Auckland to enable mitigation measures to help manage future flooding risk. This plan provides a high-level overview of formal consultation with council, iwi, hapū, mana whenua and other people and groups affected by the emergency legislation, that will be undertaken in the process of developing this OIC.

## **2. Context**

In early 2023 severe weather events, including the Auckland Anniversary weekend floods and Cyclones Hale and Gabrielle, caused significant disruption within affected regions around the North Island. The Severe Weather Emergency Recovery Legislation Act 2023 (the Act) was passed to enable recovery efforts in affected areas. The Act creates the ability to issue OIC to assist communities affected by the severe weather events to respond to, and recover from, the impacts of the severe weather events.

The proposed OIC would apply in and around the Te Ararata and Harania catchments located in the south Auckland suburb of Māngere. Specific works have been designed to reduce the risk of future flooding impacts. The locations have community level effects, impacts on individual properties and wider public interest and implications. The AC, through the Making Space for Water programme, has undertaken initial engagement on the flood works proposals.

The proposed works in Te Ararata include the following activities - installing debris capture structures upstream of Walmsley Road bridge, naturalising portions of Te Ararata Stream, Walmsley Road bridge replacement, construction of a permanent maintenance platform and accessway to the Mahunga Drive culverts, ongoing long term maintenance activities to maintain efficiency of the Mahunga Drive culverts including mangrove clearance and sediment removal/dredging.

The proposed works in Harania include the following activities - removing dams (including embankments, culverts, and sections of pipe within the dam) at Tennessee Avenue and Blake Road, constructing replacement wastewater pipes, including pipe bridges, constructing a footbridge to maintain access across the stream, relocating vulnerable services, including high voltage cables, accessory works to enable construction, potential mangrove removal and dredging of the watercourse and Coastal Marine Area to improve discharge flows.

## **3. Communications and Engagement Objectives**

Engagement on OICs is required to meet three key expectations outlined in the Act:

- local Māori and community groups can participate in the development of OICs that affect them, without impeding a focused, timely, and prompt recovery
- information about the proposed OICs is provided to affected people and organisations, (including local Māori and local community groups), and the general public
- the detail to be provided is to include:
  - an explanation of what the proposed OIC is intended to achieve
  - a description of the anticipated effect of the proposed OIC

- an explanation of why the Minister for the Environment considers that the OIC is necessary or desirable to meet the purposes of the Act.

In relation to Te Tiriti o Waitangi, the Crown is obliged to engage with iwi, hapū and mana whenua in a spirit of partnership. In addition to fulfilling the statutory requirements outlined above, the Ministry needs to engage with all those affected by the policy proposals to ensure the legislative measures are sound and fit for purpose. As a result, the engagement window is recommended to be extended to 3 weeks.

We understand that while it is over a year since the 2023 severe weather events, there is still a need for Crown assistance in Auckland. The proposed OIC would provide a pathway for recovery action, immediately providing 376 properties with a reduced flood risk. The risk of no action for affected communities will be a key driver to highlight through engagement. The work is to be co-funded by AC and the Crown's National Resilience Plan, administered through Crown Infrastructure Partners.

## 4. Engagement Approach

Formal consultation on the OIC will involve engaging with:

- Auckland Council – engaging with all tiers and levels of decision making and delegated authority
- Iwi, hapū and mana whenua and other Māori organisations as appropriate, including post-settlement governance entities
- Affected communities and other interested groups (e.g. parties not directly affected by the proposals but with an interest in the proposals).

### 4.1 Council Engagement

- Use existing MfE/AC channels and forums as much as possible (e.g. committee meetings, local board workshops, mana whenua kaitiaki forum, recovery newsletters etc)
- Ensure OIC is well socialised and supported across all levels of AC

### 4.2 Iwi, hapū and mana whenua engagement

- Utilise Tiriti analysis of iwi, hapū and mana whenua interests in proposed flood works project locations, including understanding of relevant Treaty settlement redress
- Work alongside the Ministry's Treaty Settlements and Māori Partnerships and Regional Relationships team as the relationship holders to support engagement
- Ensure early engagement and pre-consultation
- Work alongside AC to provide wider context on the proposed OIC
  - Engagement with iwi, hapū and mana whenua will be jointly led alongside AC to provide an overarching engagement package.

### 4.3 Affected Communities

- Work alongside AC to identify affected communities
- Work alongside iwi, hapū and mana whenua to identify affected communities
- Work alongside AC during engagement to provide wider context on the proposed OIC

The Ministry will lead engagement on the proposal to create the OIC, supported by Auckland Council SMEs to talk to the planned works. We will work alongside AC comms and engagement leads to provide opportunities for joined-up discussions. Roles and responsibilities of Crown and Council representatives will be agreed as we progress the detailed planning of engagement activities.



People will have the opportunity to provide written feedback as well as verbal feedback during face-to-face meetings and online sessions. Information about the proposal will be provided as a presentation, which will be publicly available via the MfE website.

Due to the short consultation period of three weeks there are limited opportunities for face-to-face engagement, however a small number of targeted meetings will be held with partners in the Auckland region, alongside online sessions and other engagement activities.

The Ministry is expected to open formal consultation on the 30 July 2024, with 23 August 2024 being the last day of statutory engagement and the last day for receiving any written feedback.

This timeframe will give visibility to the people and groups with whom the Ministry intends to engage with. It will also ensure that information about the proposed changes is on the public record and people are well-informed about what is happening.

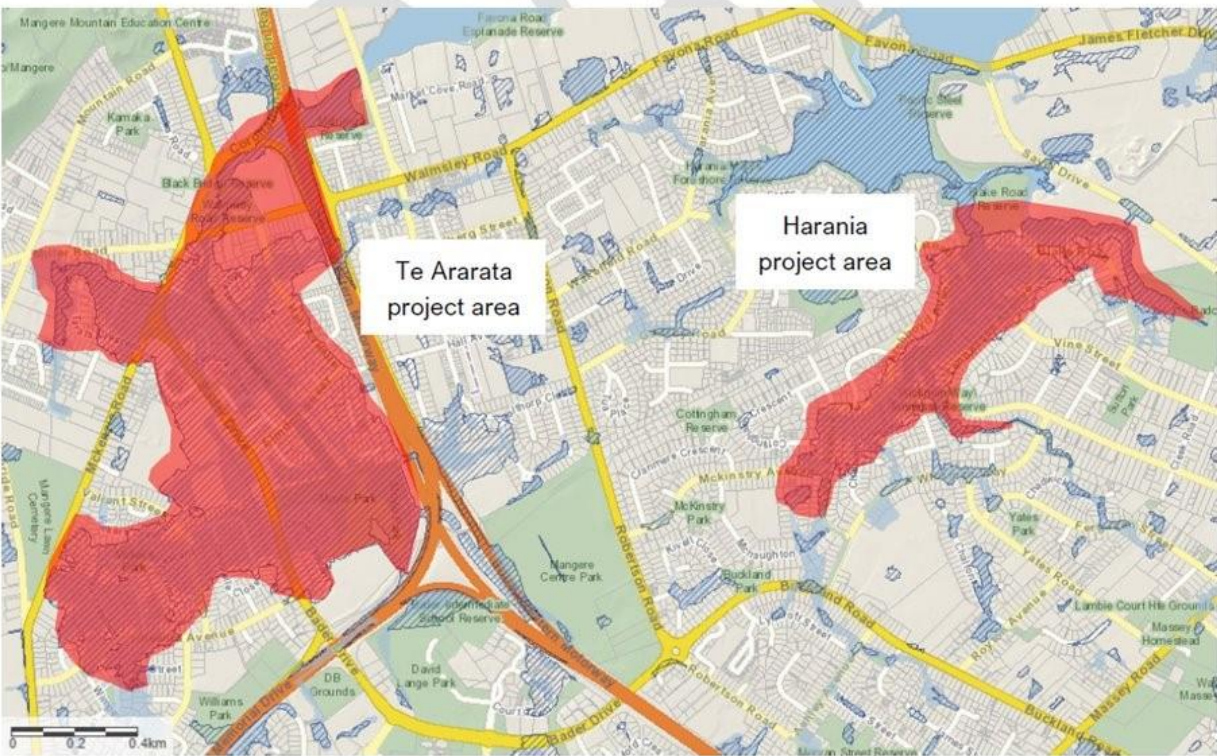
## 5. Engagement Overview

The table below outlines the engagement activities that the Minister for the Environment, via officials, proposes to undertake, which will meet (or exceed) the three working day minimum set out in section 9(1) of the Severe Weather Emergency Recovery Legislation Act 2023.

Distribution channel	Purpose	Key stakeholders	Outcome
<p>During the proposed 3-week statutory engagement period, MfE will meet face to face with the tribal authorities that are directly impacted by the proposal.</p> <p>MfE will also meet face to face with Auckland Councils Infrastructure and Environmental Services Kaitiaki Forum, which has a wide membership including most of the 19 recognised tribal authorities that have links to Tāmaki Makaurau.</p> <p>Mailing, newsletters and follow up online session if required.</p>	<p>Allow tribal authorities to gauge the effect on statutory acknowledgement/ deed of recognition areas and other areas of cultural importance.</p>	<p>Tribal authorities where the OIC will apply as the OIC may have implications for Treaty settlement redress.</p> <p>AC representatives to be invited to attend in order to answer questions on the flood works proposals directly.</p>	<p>Targeted engagement to collect, collate and consider feedback to inform any changes to the OIC proposal</p>
<p>Face to face, mailing, newsletters and online session</p>	<p>Notification about the proposed OIC, what it intends to achieve and why it is necessary</p> <p>Invite written comments</p> <p>Provide an opportunity to discuss the proposal with stakeholders</p>	<p>Local Authority (Auckland Council) whose region is covered by the OIC</p> <p>iwi, hapū, mana whenua with links to the proposed sites</p> <p>Directly affected communities</p> <p>DOC, MPI, TPK, DIA, DPMC, MBIE, Te Arawhiti, HNZ, Te Tumu Paeroa</p> <p>Māori collectives (FILG, TTK, FOMA)</p> <p>Takutai Moana (Marine and Coastal Area Act 2011)</p> <p>applicant bodies</p> <p>Local government collectives i.e LGNZ, Taituarā</p>	<p>Collect, collate and consider feedback to inform any changes to the OIC proposals</p>
<p>General public/media (via Minister's media release/ Ministry for the Environment website)</p>	<p>Inform the general public and provide an opportunity to provide feedback</p>	<p>General public</p>	<p>Consultation is transparent and any member of the public with an interest can provide feedback</p>

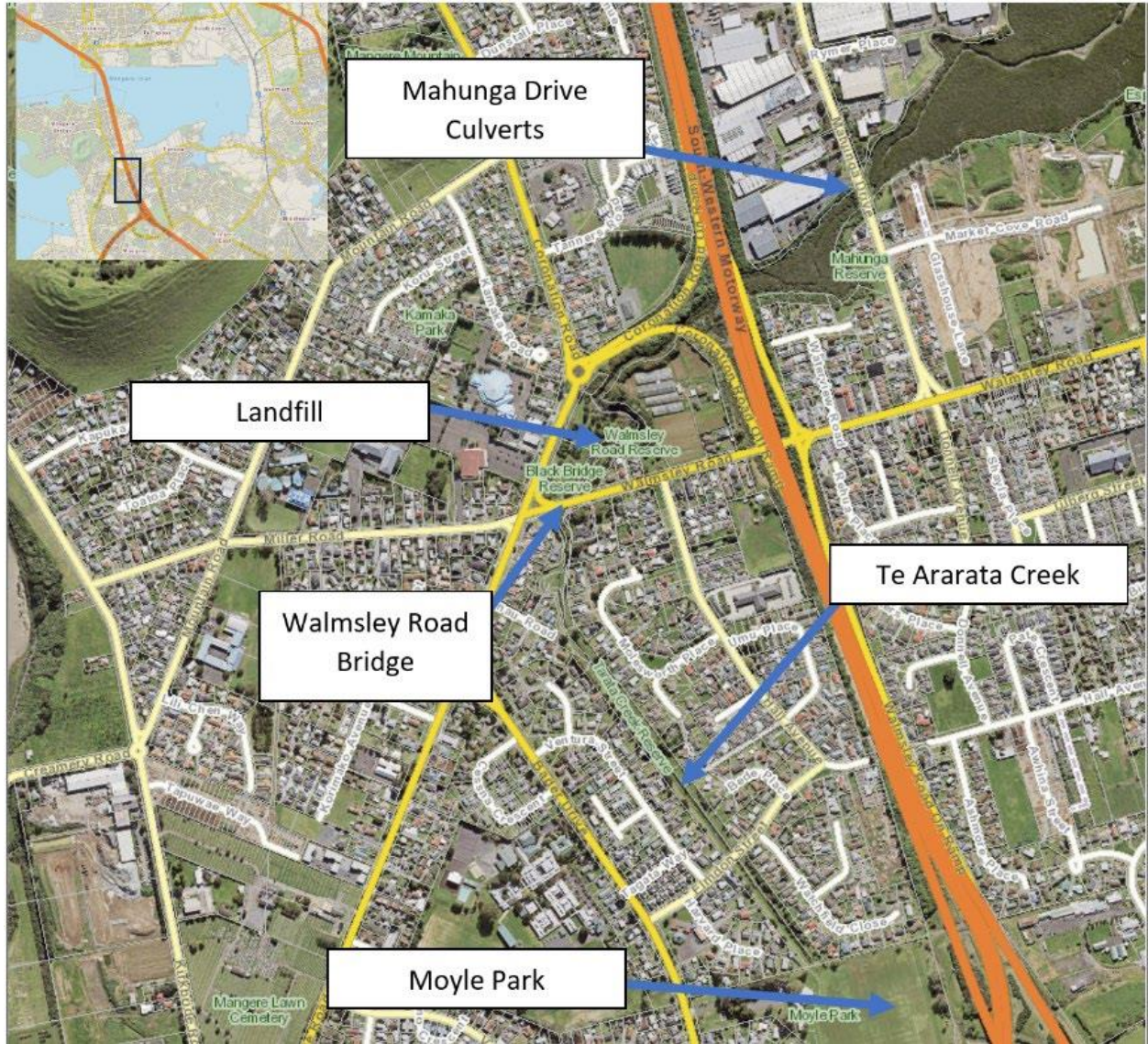
## Appendix 2: Context map and the proposed project works locations

# Context map and the proposed project works locations



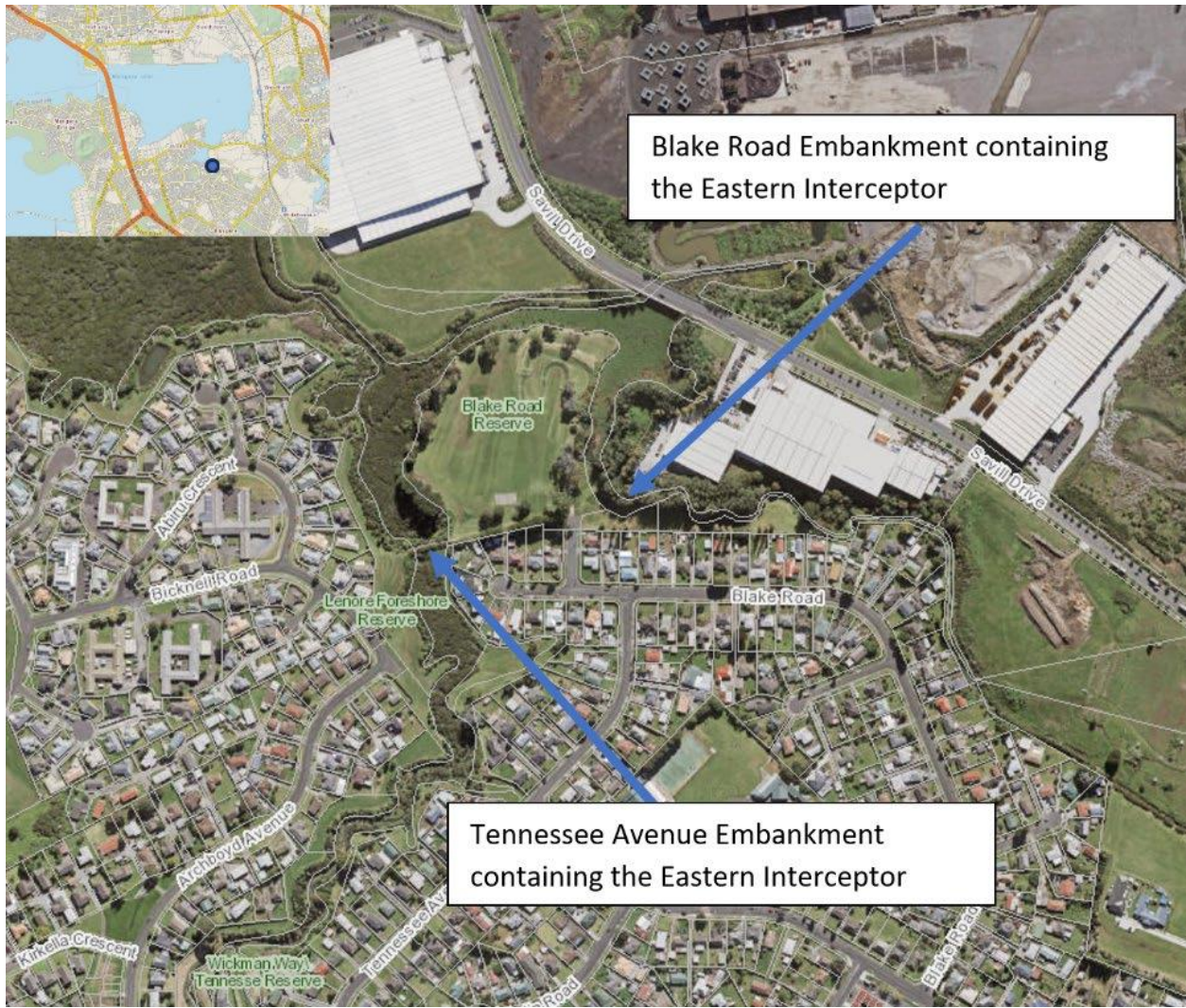
**Fig 1: Context map:** The proposed works aim to help ameliorate the threat from the major flood prone areas of Māngere, with areas of key interventions shown in red (source: Auckland Council GeoMaps).





**Fig 2:** Te Ararata proposed project works location





**Fig 3:** Harania proposed project works location

## Appendix 3: Interim Regulatory Impact Statement

# Interim Regulatory Impact Statement: Severe Weather Emergency Recovery Legislation (Auckland Council flood recovery works) Order 2024

## Coversheet

Purpose of Document	
Decision sought:	This analysis will inform Cabinet decisions on the proposed Severe Weather Emergency Recovery Legislation (Auckland flood recovery works) Order
Advising agencies:	Ministry for the Environment
Proposing Ministers:	Hon Penny Simmonds, Minister for the Environment
Date finalised:	16 July 2024
Problem Definition	
<p>Following the Auckland Anniversary Weekend floods and Cyclone Gabrielle (the severe weather events) in January and February 2023, several locations across the Auckland region were identified where critical safety enhancements and improvements to the resilience of infrastructure specific to flood control and mitigation infrastructure ('project works') are required. Two locations in the Auckland region (Harania and Te Ararata) have been identified amongst the worst affected areas in Auckland with approximately 376 affected properties, including at least 56 properties where there is an intolerable risk to life (Category 2 or 3).</p> <p>The project works have been identified as a key action in <a href="#">Te Mahere Whakaroa mō Tāmaki Makaurau (the Tāmaki Makaurau Recovery Plan)</a> and supported by the <a href="#">Making Space for Water programme of works</a>. The works are funded in the Long Term Plan<sup>1</sup>.</p> <p>Auckland Council have requested an Order in Council to address and speed up the recovery efforts following the severe weather events to increase protection against flooding in south Auckland.</p> <p>The key policy issue this proposal seeks to address is to ensure that affected homeowners in the catchments of Te Ararata and Harania are not left in situations of uncertainty of intolerable risk for prolonged periods of time.</p> <p>Flood recovery project works are required to support the protection of residential properties in the Harania and Te Ararata catchments of Māngere, South Auckland and are required to mitigate the risk to life.</p> <p>Auckland Council is anticipating the flood recovery project works be scheduled to begin in the summer of 2024/2025 and due for completion by July 2026. This is determined on necessary resource consents being obtained beforehand. However, the complex process of obtaining resource consents under the standard consenting pathway in the Resource Management Act 1991 (RMA) means that delays and uncertainty to the process are likely. The business-as-usual (BAU) resource consenting process is likely to take more than 12</p>	

<sup>1</sup> With further crown funding approval to be decided in July 2024.



months<sup>2</sup>. This would have serious impact on people who own houses identified as Category 2 and 3 properties which have an intolerable risk to life from flooding and/or landslides in Auckland.

## Executive Summary

In January and February 2023, the Auckland Anniversary Weekend flood and Cyclone Gabrielle (severe weather events) caused significant damage across the North Island and in particular across Auckland. The flooding as a result of the severe weather events has left many homeowners and occupiers across Auckland facing uncertainty and future flood risk. As a result of the severe weather events, a significant amount of water, silt and other materials was deposited into stormwater channels and systems, blocking streams, culverts and outflows. This has further compromised the capacity of the local stormwater network. At the time of the events and subsequently, these blockages caused flooding that would otherwise not have occurred if the stormwater management systems were working correctly. Proposed works look to alleviate blockages and restrictions to flow which resulted in the significant flooding. These works may include new culverts and/or bridges, upgrades to existing culverts and/or bridges, works to divert streams and stormwater, earthworks, vegetation works, and mangrove clearance.

The construction of flood risk mitigation and resilience works (project works) requires enabling provisions to be progressed urgently to ensure that affected homeowners and occupiers are not left in situations of uncertainty of intolerable flood risk for prolonged periods of time.

The project works require resource consents under the RMA. The consents are complex and require a streamlined process to ensure the works can be in place in time to enable recovery. The resource consents are a major component of the recovery programme, with significant implications to the delivery of the project works if consents are delayed.

Ministry for the Environment (MfE) officials have reviewed all potential pathways that may be available to ensure the works are completed in the minimum length of time and with most certainty to the Auckland community.

## Limitations and Constraints on Analysis

### Limitations on the problem definition or options considered

As this regulatory impact statement is interim, it is important to note that there may be gaps in the evidence base and the options presented may not have been developed to the level typically seen in a final RIS. The policy issue relies upon data and information provided by Auckland Council as the requestor for this OIC and has informed this Interim Regulatory Impact Statement.

The main constraint, on both the problem definition and the options considered, has been the timeframes for commencement of the flood recovery works –these two project works are expected to commence in summer 2024/2025 to align with the next earth working season. This timeframe has been set to speed up the recovery efforts to increase protection against flooding in south Auckland and support affected homeowners from being left in situations of uncertainty of intolerable flood risk for prolonged periods of time.

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<sup>2</sup> Likely timeframes include design and document preparation taking 6 months, notification process taking 20 working days, submissions allowing 20 working days, hearing process if required taking 45-75 working days and then a decision being 15 working days after the hearing or 30 working days after lodgement if consents are non-notified in addition to possible appeals

However, to achieve the summer 2024/2025 there are reduced legislative options that provide the needed expediency and certainty to meet this timeframe.

It is proposed that an OIC be made under the Severe Weather Emergency Recovery Legislation Act 2023 (SWERLA), as this provides a mechanism for developing OICs that modify existing legislative processes and requirements to respond to and recover from the impacts of the severe weather events of 2023. This OIC will be modelled off the Severe Weather Emergency Recovery (Hawke's Bay Flood Protection Works) Order 2024.

This proposal is for an OIC for a streamlined consenting process for flood recovery works limited to two sites in the Auckland region (Harania and Te Ararata).

The policy issue and the analysis in this Interim RIS relies upon data and information provided by Auckland Council as the requestor for this OIC. Further information is likely to come through public consultation and as MfE continues working with Auckland Council on this proposal. This information will be provided and will support the full RIS.

Public consultation is planned for approximately three weeks, totalling nineteen working days. The SWERLA requires a minimum of 3 working days for statutory engagement. In relation to te Tiriti o Waitangi, the Crown is required to engage with iwi, hapū and mana whenua in a spirit of partnership. In addition to fulfilling the statutory requirements outlined in SWERLA, MfE needs to engage with all those affected by the policy proposals to ensure the legislative measures are sound and fit for purpose. As a result, the engagement window is recommended to be extended to three weeks.

There is a limitation on time, in that this policy issue is urgent. The key reasons for the high level of urgency are:

- Even 16 months on from the severe weather events, these works are urgent and critical to reduce the risk that the affected homeowners in these catchments of Te Ararata and Harania are currently facing and are no longer left in situations of uncertainty of intolerable risk for prolonged periods of time.
- The works are necessary to ensure that residential land in the Auckland region preliminarily identified as Category 2 can safely shift to Category 1. Both the Te Ararata and Harania catchments flooded again in May 2024 during a storm and while no evacuations were required, the 376 households (including 195 Kāinga Ora homes) living in these catchments will continue to feel stress and anxiety during any heavy rainfall event until flood recovery measures are in place and allow communities to feel safe.
- The project works involve extensive construction, earthworks, stream realignments and new structures. These require long lead-in times to finalise options, complete engineering design, and to procure resource and confirm contracts. In places, works are limited to the standard construction season (i.e. October to April) to ensure environmental effects (e.g. sediment runoff) are managed. Auckland Council has stipulated that the consents need to be in place (granted) in time for the works to commence in summer 2024/2025. Therefore, the OIC needs to be in place 30 working days before the RMA clock stops for the calendar year (19 December 2024). This equates to an enactment date for the OIC on 8 November at the latest (20 December – 30 WDs = 8 November 2024). Construction (civil/physical works) is estimated to take at least one year, working within the October to May earthworks period and other limitation on the timing of the earthworks within the blue-green network.
- All possible alternative consenting pathways have been assessed and none can deliver the consents in time, whilst being efficient, managing risks and upholding

Treaty obligations, in order to achieve the milestones in [Te Mahere Whakaroa mō Tāmaki Makaurau \(the Tāmaki Makaurau Recovery Plan\)](#) work programme. The estimated total costs of these projects is \$53.84 million. The council portion of this funding has been approved as part of the overall Making Space for Water budgets through the Long Term Plan 2024-2034<sup>3</sup> and the works are a key action in [the Tāmaki Makaurau Recovery Plan](#).

- If the timeframe is unable to be met, 56 properties will need to be categorised as Category 3 and purchased under the voluntary buy-out scheme. Central government funding will not be available for any infrastructure improvements and the area, including around 3000 houses, will remain at risk of further flooding (albeit with the works-impacted houses removed). Auckland Council has advised that there is no certainty that the Harania and Te Ararata projects would proceed without shared Crown funding of the projects. Reducing the budget for these works by removing the Crown funded proportion would affect viability and project value. If not delivered via the shared Crown/Council funding mechanism, then these projects would likely be competing against other projects for council funding and therefore would have no certainty of delivery at this time.
- There is no need to delay implementation to consider design alternatives, as the detailed design phase and the reworking of design can occur concurrently with the preparation of this proposed OIC to enable the for both processes to run as efficiently as possible. Likewise, the final detailed design can be completed concurrently with the subsequent resource consent process and implemented subject to conditions of consent.

#### Responsible Manager(s) (completed by relevant manager)

Heidi Baillie  
 Manager  
 Recovery Provisions - Adaptation  
 Ministry for the Environment



16 July 2024

#### Quality Assurance (completed by QA panel)

Reviewing Agency:	Ministry for the Environment
Panel Assessment & Comment:	<p>A quality assurance panel with members from the Ministry for the Environment’s Regulatory Impact Analysis Team has reviewed the Severe Weather Emergency Recovery Legislation (Auckland Council Flood Recovery Works) Order 2024 Interim RIS. The panel considers that it <b>meets</b> the Quality Assurance criteria.</p> <p>The QA panel notes that the Severe Weather Emergency Recovery Legislation (Auckland Council Flood Recovery Works) Order 2024 Interim RIS is comprehensive, well-written and in response to a clear need, with risks and constraints clearly defined and discussed.</p>

<sup>3</sup> With further crown funding approval to be decided in July 2024.



## Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

### Current state within which action is proposed (status quo)

#### Impacts of severe weather events in January and February 2023

1. In January and February 2023 there was significant and severe weather events experienced across the North Island, including Cyclone Gabrielle and the Auckland Anniversary Weekend floods. As a result from the severe weather events, a great deal of water, silt and other materials was deposited in stormwater channels and systems, blocking streams, culverts and outflows. At the time of the events and subsequently, these blockages caused flooding that would otherwise not have occurred to the same degree if the stormwater management systems were not compromised.
2. The urban Harania and Te Ararata catchments, located in Māngere, South Auckland, were amongst the worst affected areas in Auckland, with approximately 376 properties classified as having been affected by the NIWEs, including at least 56 properties where there is an intolerable risk to life (see Table 1 below). The project works are intended to mitigate the risk to life and property in this area.
3. Table 1 below describes the reduced number of properties from 56 to five where there is an intolerable risk to life as a result of the proposed project works.

**Table 1 Residual risk from project works**

Property Risk	Definition	Dwellings with risk on 27 January 2023	Dwellings with risk after project
<b>Intolerable risk to life</b>	Intolerable risk to life using a rapid risk assessment methodology where the flood level from the January 2023 event was likely in excess of 0.5 m above floor level and the house was surrounded by floodwaters.	56	5
<b>Habitable floor flooding</b>	Properties where the rapid risk assessment methodology indicated that the flood level was likely to be above a habitable floor level.	159	10



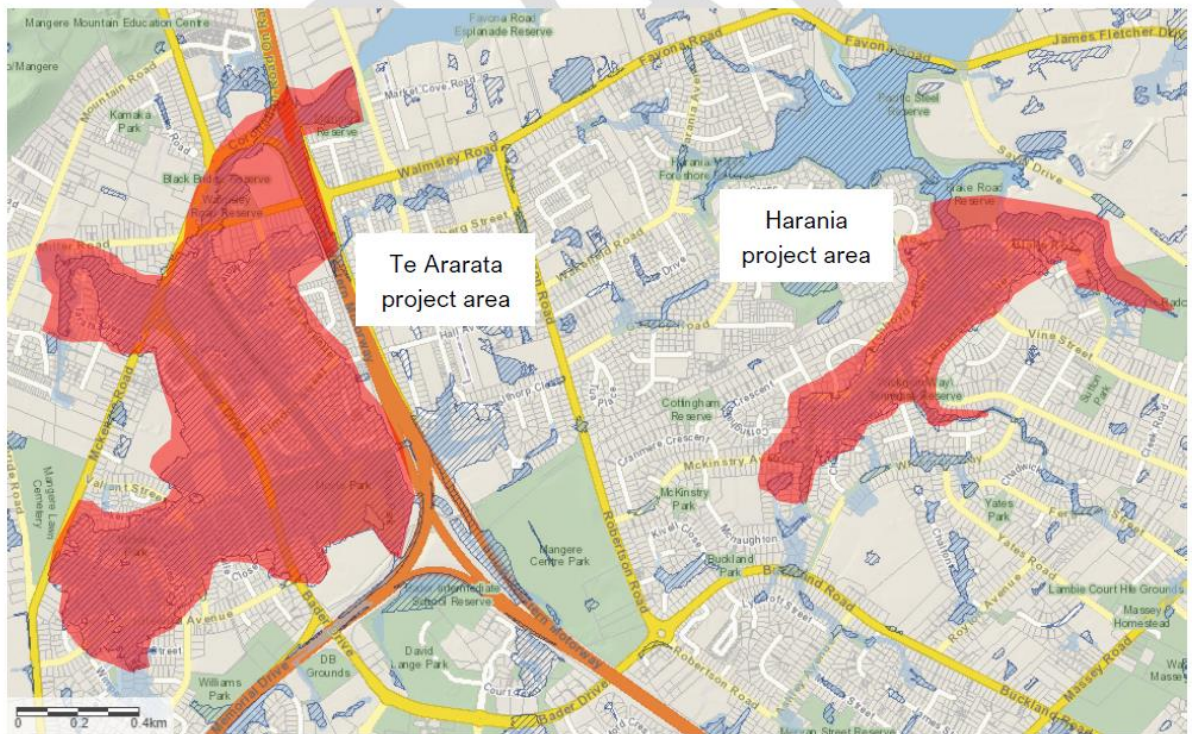


Figure 1 The proposed works aim to reduce the risk from significant flood prone areas of Māngere with the two catchment sites shown in red

4. The North Island’s recovery from severe weather events in January and February 2023, including Cyclone Gabrielle, is an ongoing concern. Significant areas of land remain severely damaged by flood waters, silt and landslide and are still susceptible to flooding particularly in the Auckland region.
5. The impact of the Auckland Anniversary Weekend flooding and Cyclone Gabrielle (severe weather events) were felt across the whole of the Auckland region. The proposed works will provide for increased protection against flooding in south Auckland, specifically in the catchments of Te Ararata Creek and Harania Creek. These were some of the worst affected areas of Auckland in the severe weather events. As flood levels rose in the creeks, water overflowed the banks of the creeks and entered people’s homes causing significant damage and evacuation.
6. Auckland Council have requested this OIC to address and speed up the recovery efforts to increase protection against flooding in south Auckland. The two project locations of Te Ararata and Harania were identified as priority areas in the Making Space For Water programme of works for council funding.

**How is the status quo expected to develop if no action is taken?**

7. The status quo is that there is no OIC in place. The standard process under the RMA would be used to obtain the relevant resource consents that are needed under the regional and district plans and national environmental standards.
8. The proposed project works are likely to be classified as discretionary and non-complying activity consents under the Auckland Unitary Plan, and the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 and the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011

9. Obtaining resource consents under the standard consents process in the RMA may require limited or full public notification meaning that the planned delivery timeframe for the flood works project is at risk and may be pushed out by a year due to timing and seasonality of the work.
10. If the status quo RMA consenting option is pursued, the likely outcome/impact is:
  - The project works would not start for another year meaning private residential and crown/council owned land remains subject to flooding risk, property damage and risk to life
  - Continued stress and uncertainty for South Auckland residents
  - Longer timeframe and increased uncertainty to achieve completion of the overall programme if not advanced as a centrally funded project
  - Longer timeframes and greater uncertainty as to outcomes when seeking resource consents under business-as-usual processes
  - Significant cost and resourcing issues for the Auckland Council to prepare resource consent applications, and as the consent authority, process them
  - Loss of investment certainty on the part of affected landowners, local communities and Kāinga Ora due to ongoing questions as to whether the land in Category 2 areas can be reclassified as Category 1.

### **Key features and objectives of the regulatory system currently in place**

11. The proposed OIC will be made under the Severe Weather Emergency Recovery Legislation Act 2023 (SWERLA), which came into force on 12 April 2023 and expires on 31 March 2028. The purpose of the SWERLA is to assist communities and local authorities affected by the severe weather events to respond to, and recover from, the impacts of the severe weather events of 2023. It provides for planning, rebuilding, and making safety enhancements and improvements to the resilience of land and infrastructure.
12. The SWERLA also supports enabling other legislation to be relaxed or operate more flexibly to support recovery. It enables OICs to be made that modify other legislation, relieving those affected by the severe weather events from overly burdensome legislative requirements. Modifications are also permitted where necessary to enable prompt action for an efficient and timely recovery. The SWERLA requires that OICs must be necessary or desirable for the purposes of the SWERLA.
13. Consents for the Auckland flood works are required under the RMA, which promotes the sustainable management of natural and physical resources and sets rules and requirements to manage activities. Decisions made under the RMA are usually the responsibility of regional and district/city councils, through regional policy statements, plans, and resource consents. Apart from the standard pathway for obtaining resource consents under the RMA, other pathways also exist. These are assessed in this interim RIS further paper below, and include:
  - Global consent for both Te Ararata and Harania
  - Fast-track consenting pathway (Retained from Natural and Built Environment Act 2023 under the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023)
  - RMA resource consents granted via direct referral to the Environment Court pathway
  - Notice of Requirement for new designations at both Te Ararata and Harania sites
  - RMA Plan Change using Standard Schedule 1 process to amend the Auckland Unitary Plan

- RMA Plan Change using the Streamlined Planning Process to amend the Auckland Unitary Plan
- New Fast Track Bill approvals process

### Key legislation of relevance

14. In the immediate aftermath of the NIWE, the Severe Weather Emergency Legislation Act 2023 (SWELA) was passed into law on 20 March 2023 to support the immediate recovery and rebuild. It was shortly followed by the Severe Weather Emergency Recovery Legislation Act (SWERLA) which provided for OICs to be made. SWERLA contains a list in Schedule 2 of the 27 specified Acts which may be amended by an OIC and further instructions of the availability of others Acts which may be amended (clauses 28-32 of Schedule 2 of SWERLA).
15. The proposal of an OIC would seek modification to the following sections of the RMA: 9, 12, 13, 14, 15, 43B, 87A, 88, 91, 92, 91D, 95 to 99A, 104, 104A, 105, 107, 108, 115.

## What is the policy problem or opportunity?

### The nature, scope and scale of the problem

16. The North Island of New Zealand experienced severe weather events in January and February 2023, including Cyclone Gabrielle, resulting in substantial damage to the economy, infrastructure, natural environment, and community wellbeing. In Auckland, flood levels rose in the creeks and water overflowed the banks of the creeks and entered people's homes as a result of debris constricted channel and course of the creeks and significant volumes of water inundating the system.
17. The flood works have been identified as a key action in the Tāmaki Makaurau Recovery Plan and supported by the Making Space for Water programme of works. The works are funded in the Long-Term Plan<sup>4</sup>. The Tāmaki Makaurau Recovery Plan was approved January 2024 and Auckland Council's Governing Body adopted the Long-term Plan 2024-2034 on 27 June 2024 which set out local government funding for the works.
18. Two locations in the Auckland region (Harania and Te Ararata) have been identified for this proposed Order in Council as two project sites where there are approximately 376 affected properties, including at least 56 properties where there is an intolerable risk to life.
19. The policy problem is that there are flood recovery works needed in the Te Ararata and Harania catchments, and the property owners and residents in these areas are facing sustained risk exposure and uncertainty which is an unacceptable situation. MfE is reviewing all potential consenting pathways (including the retained fast-track consenting pathway from the now repealed Natural and Built Environment Act 2023 (NBA)) to ensure the works can begin, and be completed, without delays (see Table 1 below).
20. The key reason to look for ways to progress consenting faster than the currently available pathways are:
  - The project works are necessary to ensure properties preliminarily identified as Category 2 can safely shift to Category 1. A significant number of residents are currently in limbo facing ongoing flooding risks

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<sup>4</sup> With further crown funding approval to be decided in July 2024.

- The flood recovery works involve extensive works which require lead in times including procuring contractors. It is important that these contracts are in place in the lead up to the construction period (summer 2024/2025)
- All possible alternative consenting pathways have been assessed and none can deliver the consents in time to achieve the timeframe of work commencing summer 2024/2025.

### Who is affected by this issue?

21. While this is an Auckland-wide issue, the urban communities of Harania and Te Ararata, specifically the owners and residents of 376 properties (including 195 Kāinga Ora properties) identified as being affected by the NIWE (including at least 56 where there is an intolerable risk to life) will be the most affected by the resolution of this policy issue. If the project works are not starting for another year or so (due to BAU consenting timeframes or possible consenting or funding delays) there will be additional serious and significant impacts on the landowners and tenants of those properties in terms of stress and anxiety while they wait for the project works to protect their homes.
22. As the project works have co-benefits within the catchments, such as flood protection for council owned assets (e.g. open space reserves), the wider public will also be affected by any delay in completion of the project works. While not as serious and significant as the impacts on the households identified above, the impacts of prolonged risk exposure also contributes to wider public unease and anxiety.

### What objectives are sought in relation to the policy problem?

23. The objectives are for both locally led, central government supported approach that enables flood recovery works to be undertaken in a manner that is timely and provides certainty to Māngere residents. This will mean:
  - People and communities in the Auckland region can recover from the effects of the severe weather events through the construction of flood recovery works and supporting infrastructure
  - Enabling provisions can be progressed urgently to ensure that affected homeowners are not left in situations of uncertainty of intolerable flood risk for prolonged periods of time.
24. In designing a policy intervention, officials are mindful of the Coalition Government's commitment to upholding redress in Treaty of Waitangi settlements, and to managing adverse impacts on the environment.
25. The intended outcome is for an OIC, made under the SWERLA, that provides for a streamlined consenting process for Auckland flood works, enabling Auckland Council to undertake the project works beginning in summer 2024/2025 and be completed by July 2026.



## Section 2: Deciding upon an option to address the policy problem

### Focus of this interim Regulatory Impact Statement

26. This interim RIS discusses options for addressing the Auckland region's NIWE recovery, considers key benefits and assesses whether there are any risks or unintended consequences with the preferred options. A more comprehensive assessment will be provided in a full RIS towards the final steps of the Order in Council development stage once more information is available.

### What criteria will be used to compare options to the status quo?

27. We have used the following criteria to compare the different options at this stage of the Interim RIS. The criteria are equally weighted.
- **Expediency** – the ability of the option to achieve the outcome sought in the quickest timeframe.
  - **Effectiveness** – the ability of the option to support cyclone recovery in the rural community.
  - **Cost** – the ability of the option to achieve the outcome sought with the lowest financial cost.
  - **Uphold Crown obligations under Te Tiriti o Waitangi** – the ability of the option to honour the Treaty and uphold Treaty settlements and other arrangements.
  - **Manage risks** – the potential of the option to result in unintended consequences.

### What scope will options be considered within?

28. All the options are limited to RMA processes (as SWERLA provides an ability to modify the RMA via an OIC mechanism, as set out in Schedule 2 of SWERLA). The different options are considered in the section below. The main criteria for the options are the timeframes, efficiency and potential costs involved.
29. The project works may also require permits and authorisations under the Conservation Act, which is administered by the Department of Conservation (DOC). It is expected that a memorandum of understanding between Auckland Council and DOC will ensure that any concessions or permits are processed through an expedited process and not require changes to be made to the Conservation Act via an OIC mechanism.
30. There are no other non-legislative options viable to enabling the project works without needing to obtain a resource consent (under any of the existing RMA consenting pathways, or under the proposed OIC). One option is to do nothing and not undertake the works. This non-legislative option is not considered viable as this will not achieve the purpose of the Act to assist people and communities to recover from the effects of the NIWEs, as the project works are necessary to ensure Category 2 residential land can be reidentified as Category 1 land.
31. One non-legislative option that does still include obtaining a resource consent is the direct referral process with the Environment Court. Further analysis of this as an option is provided in Option 5 and Table 1 below.

### What options are being considered?

#### *Option 1 – Status Quo*

32. The status quo provides for the standard RMA resource consenting pathway. The project works would require resource consents under the Auckland Unitary Plan and potentially some national environmental standards:

- Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NESF)
  - Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES-CS)
33. When bundled together, the consents sought for each of the project works is likely to be classified as either a discretionary or non-complying activity.
  34. The standard consenting pathway is likely to involve lengthy timeframes (due to potential for hearing processes and appeals), and uncertainty in outcome of the final decision. During this time, South Auckland residents and crown/council owned land would remain subject to flooding risk, property damage and risk to life.
  35. Under the standard resource consenting pathway, the applications are likely to be publicly notified as it is unlikely that sufficient information will be available to confirm there are no adversely affected parties (or written approvals obtained). The public submission, hearing and determination process is estimated to take 12 months.
  36. The standard consenting pathway also has a risk of further delay through appeals lodged to the Environment Court.

#### *Option 2 – Auckland Council Flood Recovery Works Order in Council*

37. This option proposes an OIC be progressed and made under SWERLA to modify the RMA and Auckland Unitary Plan to streamline the resource consenting process to provide for the recovery works as controlled activities.
38. The streamlined consenting process would see the recovery project works processed as controlled activities, non-notified and with no appeal rights under the RMA.
39. This option would also allow for the recovery works to begin in time for summer 2024/2025 and with greater certainty in comparison with the status quo, as the consents would be processed as controlled. This means consents must be granted (with possible conditions and matters of control which will avoid, remedy or mitigate adverse environmental effects). Requirements for public notification and hearings would be removed under this option, and rights of appeal to the Environment Court would also be removed. This option would be anticipated to take approximately five to seven months.
40. The duration of consents obtained via the OIC pathway would be limited to five years. It is proposed that any consents with enduring duration would be limited to a maximum of five years. After this time the Auckland Council will have to apply for consent using the BAU consenting process if they wish to retain the consented element granted under the OIC. This ensures that the council are not provided with any enduring consents beyond five years that may broaden the purpose of the works beyond that allowed under SWERLA. This is the same approach that was used in the Severe Weather Emergency Recovery (Hawke's Bay Flood Protection Works) Order 2024.
41. The OIC option provides greater certainty to council and community comparative to the standard RMA consenting process and accelerating the recovery process (because the works will be granted consent under controlled activity status). If the status quo option is pursued, then the consents may be processed as either discretionary or non-complying activity, which adds uncertainty and additional time to the project timeframes.
42. This option may provide requirement to notify iwi/hapū/Māori in advance of works. This requirement will be developed post engagement with iwi/hapū/Māori and Post-Settlement Governance Entities and informed through the Treaty Impact Analysis. Further information will be provided in the full RIS.
43. This option does pose a risk that any adverse environmental effects may be caused by the activity from a streamlined consenting process. However, the scope of an OIC is constrained by the requirements set out in s8(1) of SWERLA and any adverse effects on

the environment are to be appropriately mitigated, avoided, or remedied by conditions placed on the consents. A set of standard conditions will be available to the decision maker in an appendix to the OIC, with Matters of Control also set out in case of the need to impose additional conditions or amend the standard conditions once the specific consent activities have been described in the lodgement details.

### *Option 3 - Global consents for both the Harania and Te Ararata catchment works*

44. This option proposes getting a single global resource consent for all the works proposed to be undertaken in both the Harania and Te Ararata catchments. This consent would cover all the proposed works and would be a bundled comprehensive consent. It is likely this would be a non-complying activity.
45. The main advantage over Option One is that it is a single resource consent and therefore would follow a single processing timeframe (in the BAU consenting option above, multiple consents for each catchment may be applied for each of the works depending on the chosen design outcomes within each of the catchments). Having a single global consent would give the council flexibility to use different design techniques in various places within the catchments, e.g. mangrove clearance, without having to stipulate at the time of application, where these techniques might be used.
46. Global consents are necessarily difficult and take time to consent as they must consider multiple outcomes and be precautionary in their conditions. This can sometimes mean requiring detailed management plans and principle-based management plans to be provided by way of conditions. This can lead to lack of certainty for submitters and the public.
47. By their nature, global consents also require co-ordination with iwi, hapū, local community representatives, technical experts and local authorities which adds significant time and resource constraints to the project.
48. The time taken to consent this option may be longer than normal BAU and provides no certainty that the consents will be granted and in time for works to begin in summer 2024/2025, but this option does provide more certainty that design outcomes can be achieved through flexibility.
49. We estimate that this option would take approximately 12 months for consenting, including notification, hearings and decisions. It would then be subject to an appeal process which could take up to 2 years.
50. This option is approximately the same time period as a BAU consenting process. The savings are in the efficiency of following a single processing timeframe. However, there is still the uncertainty that this option would provide the certainty that the project works would be consented and in time to allow for works to commence in time for season of summer 2024/2025.

### *Option 4 – Fast-track consenting pathway (Retained from Natural and Built Environment Act 2023 under the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023)*

51. The Government has retained the fast-track consenting pathway from the now repealed Natural and Built Environment Act 2023 (NBEA). This is an interim measure until a new, standalone fast-track consenting legislation comes into effect. The projects works are eligible activities<sup>5</sup> and may be consented under this pathway. The expected timeframes for this pathway is approximately 12 months.

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<sup>5</sup> Schedule 10, clause 14(k) of the NBA: *flood control and protection, including drainage*

52. As with the standard consenting pathway, there remains a high risk the planned delivery timeframes for the project works may end up pushing out the timeframes by a year due to timing and seasonality of the work.
53. From an efficiency and expediency perspective, this option (similar to the BAU option) of seeking a resource consent through the Fast-track consenting pathway is an uncertain process as there is no certainty that consent will be granted.

#### *Option 5 – RMA resource consents granted via direct referral to the Environment Court pathway*

54. The direct referral pathway addresses the timing risks of appeals being lodged against the consent authority's decisions. While total processing times vary, based on prior examples of applications determined under this pathway, a timeframe of approximately 12 months from lodgement with the local authority through to a decision by the Court is likely.
55. The direct referral pathway is less viable than the BAU resource consenting process as bundling these consents into a single application and progressing through the direct referral process is highly resource intensive and requires a high evidentiary requirement to meet (including technical reporting and engagement).
56. The direct referral pathways would likely involve a fully public notified process of the consents which adds to the time and costs of the project works. As with Options 1 and 3, there remains a high risk of significant delays (compared to the OIC) including obtaining the relevant consents and completing the project works.

#### *Option 6 – RMA Notices of requirement for new designations*

57. Designations authorise district matters without the need for a resource consent. However, designations are not available for regional matters or the Coastal Marine Area (CMA) and as a result, this option will not supplant the need to obtain regional resource consents and any relevant consents under the NESs.
58. Although not viable as an alternative consenting pathway, notices of requirement could be sought later to ensure the completed works are protected from neighbouring land use changes, and to enable the project works without the need to secure future land use consents.

#### *Option 7 – RMA Plan Change using standard Schedule 1 process to amend the Auckland Unitary Plan*

59. This option directly addresses the activity classification and matters of consideration for the project works in the unitary plan. Under this pathway, the Auckland Unitary Plan would be amended to include a permitted or controlled activity status for the project works activities. The plan changes could not introduce rules that are less onerous than national environmental standards (unless otherwise stated) and this option is also required to comply with relevant NESs.
60. The option is a two-step process with a plan change followed by resource consent. A standard plan change process of this nature is estimated to require at least two years to complete the Schedule 1 process to a decision by the relevant local authority. This does not take into account any appeals lodged against the decision.
61. Consequently, there is the uncertainty that this option would provide the needed certainty that project works would be consented and in time to allow for works to commence in time for beginning of summer 2024/2025

*Option 8 – RMA Plan Change using the Streamlined Planning Process to amend the Auckland Unitary Plan*

62. Whilst faster than the standard plan change process, the streamlined planning process (SPP) with a tailored process proportional to the nature of the planning issue and limited appeals, it is still a two-step process with a decision for plan change required first before obtaining resource consent. The timeframes for the SPP are prescribed in the Minister’s direction for the plan change, however this does not provide the certainty the consents will be granted in time for the project works to commence by late 2024.

*Option 9 – use the new Fast Track Bill approvals*

63. The Fast Track Bill proposes to establish a permanent fast track approvals regime for a range of infrastructure, housing and development projects. The Bill has been introduced to the House and public submissions are being accepted by the Environment Committee.
64. This pathway may save time compared with normal BAU processing and reduces the concern around appeal timeframes, but the level of uncertainty and enactment timing means that it would not allow the works to be started in the summer 2024/2025 earth working season.
65. The Bill is anticipated to be based on previous fast-track consenting regimes, but with important differences to enable projects that have significant local, regional, or national benefits to be consented more quickly and more efficiently. The Bill will set out a ‘one-stop shop’ process for approvals under a range of legislation. The Bill may contain a list of projects that will be assessed in parallel to the development of the Bill and provided to the Minister for referral assessment almost immediately upon enactment.
66. Applications will be assessed against a set of criteria by the Minister for Infrastructure as responsible Minister (with assistance from relevant agencies), to determine their benefits for the economy and environment. The assessment will ensure protections for Treaty of Waitangi settlements and other legislative arrangements including under the Marine and Coastal Area (Takutai Moana) Act 2011, Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, Mana Whakahono ā Rohe and Joint Management Agreements made under the RMA.
67. The responsible Minister would then decide whether to refer the project to an Expert Panel (EP). The EP would then apply any necessary conditions to ensure a project meets environmental and other outcomes.
68. The legislative process for the Bill extends into mid-late 2024.<sup>6</sup> It will not be available in time to consent the project works. When enacted it is likely the new fast-track process will remove the need for future Orders that modify RMA consenting processes. However, until the legislation is in place, it is not a viable option to consent the project works.

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<sup>6</sup> Select Committee is intended to be between 4 – 6 months, with the Bill introduced in late 2024.



## How do the options compare to the status quo?

Table 2: Comparison of options under the RMA to provide for Auckland Council flood recovery works

	<b>Option 1 – RMA standard resource consenting pathway (BAU)</b>	<b>Option 2 – Auckland Flood Recovery Works OIC <i>Preferred option</i></b>	<b>Option 3 – Global consent for both catchment works</b>	<b>Option 4 – Fast-track consenting pathway (Retained from NBEA under the NBEA Repeal Act 2023)</b>	<b>Option 5 – RMA resource consents via direct referral to the Environment court pathway</b>	<b>Option 6 – RMA Notice for requirement for new designations</b>	<b>Option 7 – RMA Plan Change using Standard Schedule 1 process to amend the Auckland Unitary Plan</b>	<b>Option 8 – RMA Plan Change using the SPP to amend the Auckland Unitary Plan</b>	<b>Option 9 – Use the new Fast Track Bill approval process</b>
<b>Expediency</b>	0 Seeking a resource consent is an uncertain process there is no assurance of outcome for the applicant. The estimated timeframe is 12+ months	++ Will support recovery and reduce risk in the swiftest manner possible. With enactment in October 2024 this enables works to begin summer 2024/25. The estimate timeframe is 5-7 months (almost half the	- Seeking a global resource consent is an uncertain process for Auckland Council as the applicant with no assurance of outcome. This process is time consuming and is a complex process. Given the complex process this option is expected to take longer than the BAU option. The estimated timeframe is 12+ months. Possible	- This option is similar to the BAU option in that seeking a resource consent through the Fast-track consenting pathway is an uncertain process as there is no certainty that consent will be granted. The risk remains high for significant delays in obtaining consents and	0 This option is likely to be shorter than a standard RMA plan change and consenting process. However, it is not viable as an alternative consenting pathway as there is no certainty that works could start in time for next earth working season.  Estimated timeframe 12+ months.	-- This option is similar to the BAU option in that a regional resource consent and any relevant consent under the NESs would still be required.  Estimated timeframe 12-18 months.	-- Schedule 1 plan changes are uncertain processes, more so than that BAU as there is no assurance of outcome. It adds significant time from the BAU through requiring a lengthy timeframe for preparation (3-9 months preparation) and processing (1-2 years average) of the proposed plan change time. A second step of implementation	-- This option is similar to Option 7 as it is a two-step process and does not ensure that consents would be granted in time for the project works to commence by late 2024.	- This option is similar to the BAU option in that seeking a resource consent through the Fast-track consenting pathway is an uncertain process as there is no certainty that consent will be granted. The risk remains high for significant delays in obtaining consents and undertaking and completing

	<b>Option 1 – RMA standard resource consenting pathway (BAU)</b>	<b>Option 2 – Auckland Flood Recovery Works OIC <i>Preferred option</i></b>	<b>Option 3 – Global consent for both catchment works</b>	<b>Option 4 – Fast-track consenting pathway (Retained from NBEA under the NBEA Repeal Act 2023)</b>	<b>Option 5 – RMA resource consents via direct referral to the Environment court pathway</b>	<b>Option 6 – RMA Notice for requirement for new designations</b>	<b>Option 7 – RMA Plan Change using Standard Schedule 1 process to amend the Auckland Unitary Plan</b>	<b>Option 8 – RMA Plan Change using the SPP to amend the Auckland Unitary Plan</b>	<b>Option 9 – Use the new Fast Track Bill approval process</b>
		timeframe as the BAU option)	appeals could take up 2 years.	undertaking and completing the project works.  The estimated timeframe is 12+ months.			is required (which could involve some form of consent process and this does not ensure that the consent would be secured in time for the project works to commence in time. This option also includes the option for appeals which may be lodged against the plan change decision which adds time to the process.		the project works.  There is also no certainty of when the Bill will be enacted or what the content will be following select committee.  Possible timeframe estimate is 8-12+months.
<b>Effectiveness</b>	0 Adds uncertainty (no assurance of outcome), time and costs to the recovery process	<b>++</b> Will remove regulatory red tape to facilitate recovery.	<b>-</b> Adds uncertainty with no assurance of outcome, additional time and costs to the recovery	0 This option will remove regulatory red tape to facilitate the flood recovery project works.	<b>-</b> This option is a highly resource intensive process with high evidentiary requirement to meet including	<b>-</b> This option is not viable as an alternative consenting pathway as there is no certainty that	<b>--</b> This option is ineffective as it is a two-step process as it requires both a plan-change and obtaining	<b>--</b> This option is ineffective as it is a two-step process as it requires both a plan-change and obtaining	<b>-</b> This option will remove regulatory red tape to facilitate the flood recovery project works.

	<b>Option 1 – RMA standard resource consenting pathway (BAU)</b>	<b>Option 2 – Auckland Flood Recovery Works OIC <i>Preferred option</i></b>	<b>Option 3 – Global consent for both catchment works</b>	<b>Option 4 – Fast-track consenting pathway (Retained from NBEA under the NBEA Repeal Act 2023)</b>	<b>Option 5 – RMA resource consents via direct referral to the Environment court pathway</b>	<b>Option 6 – RMA Notice for requirement for new designations</b>	<b>Option 7 – RMA Plan Change using Standard Schedule 1 process to amend the Auckland Unitary Plan</b>	<b>Option 8 – RMA Plan Change using the SPP to amend the Auckland Unitary Plan</b>	<b>Option 9 – Use the new Fast Track Bill approval process</b>
			process. Once granted, will enable recovery activities but the timeframes are too long.	However, there is still some uncertainty with no assurance of outcome. The process will involve approximately 12 months of approval time (design and preparation, processing, notification, submissions, decisions and limited appeals).	technical reporting and engagement more so than the BAU resource consent process.  The consents would likely be publicly notified which would add time and costs to the delivery of the works.	works could start in time for next earth working season.  While Notices of Requirement authorise district level consents with no need for a resource consent, there would still be a requirement to obtain regional consents.	of resource consents to allow for the project works to be undertake via the controlled activity pathway. This option does not provide assurance of outcome and adds time (preparation and processing and hearing time) and costs (processing and hearing costs including additional costs) comparative to option 1/BAU.	of resource consents to allow for the project works to be undertake via the controlled activity pathway. This option does not provide assurance of outcome and adds time (preparation and processing and hearing time) and costs (processing and hearing costs including additional costs) comparative to option 1/BAU	The process will involve approximately 8- 12 months of approval time (design and preparation, processing, limited appeals), It is not certain at this stage what the final outcome will be of this piece of legislation, and thus difficult to assess with any certainty whether it can achieve effectiveness as we do not know the final shape and scope of the Act.
<b>Cost</b>	<b>0</b> Costs for preparing and processing	<b>+</b> Will remove regulatory	<b>-</b> A complex consent which requires	<b>0</b> Reduces some regulatory red tape so some	<b>--</b> Requires significant costs and	<b>-</b> While the costs may be reduced with	<b>--</b> Adds costs through the two-step	<b>--</b> Adds costs through the	<b>0</b> Reduces some regulatory red tape so some



	<b>Option 1 – RMA standard resource consenting pathway (BAU)</b>	<b>Option 2 – Auckland Flood Recovery Works OIC <i>Preferred option</i></b>	<b>Option 3 – Global consent for both catchment works</b>	<b>Option 4 – Fast-track consenting pathway (Retained from NBEA under the NBEA Repeal Act 2023)</b>	<b>Option 5 – RMA resource consents via direct referral to the Environment court pathway</b>	<b>Option 6 – RMA Notice for requirement for new designations</b>	<b>Option 7 – RMA Plan Change using Standard Schedule 1 process to amend the Auckland Unitary Plan</b>	<b>Option 8 – RMA Plan Change using the SPP to amend the Auckland Unitary Plan</b>	<b>Option 9 – Use the new Fast Track Bill approval process</b>
	consents under the status quo remain expensive, estimated between \$6,000 and \$110,000 per consent for the preparation and processing, depending on the type of consents and whether it is notified (limited or full) or not.	red tape and reduce the potential for hearings which adds to the costs significantly.	significant staff and commissioner costs as well as increased costs of applicant technical expertise.	costs are reduced, However, adds costs for applications with technical experts and commissioner time.	resourcing for the applicant (Auckland Council) to prepare the application and then go through the direct referral process.  Likely to be publicly notified, which adds significant time and costs to the delivery of the works.	no need for resource consents at the district level matters, the costs will still be required for obtaining regional consents. Adds costs for applications with technical experts.	process. Plan Change process adds costs through the need to additional council staff time, commissioner costs as well as technical expertise. Potential hearings and appeals costs.	two-step process.	costs are reduced, However, adds costs for applications with technical experts and commissioner time.
<b>Uphold Treaty obligations</b>	0 Meets expectations/obligations	0 Possible requirement to notify in advance of works to any relevant iwi/Māori/hapū,	0 Meets expectations/obligations	0 Meets expectations/obligations	0 Meets expectations/obligations	0 Meets expectations/obligations	0 Meets expectations/obligations	0 Meets expectations/obligations	0 Meets expectations/obligations

	<b>Option 1 – RMA standard resource consenting pathway (BAU)</b>	<b>Option 2 – Auckland Flood Recovery Works OIC <i>Preferred option</i></b>	<b>Option 3 – Global consent for both catchment works</b>	<b>Option 4 – Fast-track consenting pathway (Retained from NBEA under the NBEA Repeal Act 2023)</b>	<b>Option 5 – RMA resource consents via direct referral to the Environment court pathway</b>	<b>Option 6 – RMA Notice for requirement for new designations</b>	<b>Option 7 – RMA Plan Change using Standard Schedule 1 process to amend the Auckland Unitary Plan</b>	<b>Option 8 – RMA Plan Change using the SPP to amend the Auckland Unitary Plan</b>	<b>Option 9 – Use the new Fast Track Bill approval process</b>
<b>Manage Risks</b>	0 Will manage environmental risks. Will increase risk of damage/loss of life in future severe weather events due to delayed recovery and low resilience.	- May increase environmental risks may be caused by the activity. However, the scope of an OIC is constrained by the requirements set out in s8(1) of SWERLA. May be dealt with by an independent duty commissioner.	- Will manage environmental risks. Will increase risk of damage/loss of life in future severe weather events due to delayed recovery and low resilience.	- Will manage environmental risks. There are also unknown risks of this option as this law may be disappplied sometime soon resulting in uncertainty for what replaces it and whether its consents are enduring	- Will manage environmental risks. Will increase risk of damage/loss of life in future severe weather events due to delayed recovery and low flood resilience.	- Will manage environmental risks. Will increase risk of damage/loss of life in future severe weather events due to delayed recovery and low flood resilience.	- Will manage environmental risks. Will increase risk of damage/loss of life in future severe weather events due to delayed recovery and low flood resilience.	- Will manage environmental risks. Will increase risk of damage/loss of life in future severe weather events due to delayed recovery and low flood resilience.	- Will manage environmental risks. There are also unknown risks of this option as this is still at the Bill stage, it is not certain at this point in the process what the final outcome will be of this piece of legislation once it is enacted.

	Option 1 – RMA standard resource consenting pathway (BAU)	Option 2 – Auckland Flood Recovery Works OIC <i>Preferred option</i>	Option 3 – Global consent for both catchment works	Option 4 – Fast-track consenting pathway (Retained from NBEA under the NBEA Repeal Act 2023)	Option 5 – RMA resource consents via direct referral to the Environment court pathway	Option 6 – RMA Notice for requirement for new designations	Option 7 – RMA Plan Change using Standard Schedule 1 process to amend the Auckland Unitary Plan	Option 8 – RMA Plan Change using the SPP to amend the Auckland Unitary Plan	Option 9 – Use the new Fast Track Bill approval process
Overall assessment	0	++	-	-	-	-	--	--	-

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

## Section 3: Delivering an option

### How will the new arrangements be implemented?

69. This RIS is an interim report only. The final details of the proposal are not clear yet as engagement has not yet been undertaken.
70. MfE's intention is to get the preferred option enacted at the end of October 2024 to enable the council to lodge their consents by early November to allow for consent decisions before the end of the RMA calendar year on 20 December 2024. This will allow for work to begin in summer 2024/2025.
71. The OIC option would not have retrospective effect.
72. Any adverse effects caused by the project works will be avoided, remedied or mitigated by way of conditions of consent.
73. There will be communications strategies and engagement plans coordinated between MfE and Auckland Council to ensure the messaging for the Auckland communities is consistent, informative and accurate.

### How will the new arrangements be monitored, evaluated, and reviewed?

#### Monitoring and evaluation

74. Monitoring of the activities will occur when required by the relevant council compliance staff.

#### Review of the Order in Council

75. It is proposed that the OIC be reviewed one year after enactment. This review will be undertaken by MfE as part of MfE's regular and ongoing reviews (which started in early 2024) of OICs that are made under the SWERLA, and for which the Minister for the Environment is the responsible Minister.
76. Section 12 of the SWERLA requires the relevant Minister to keep OICs under review and decide whether they continue to be satisfied in relation to the following matters (SWERLA section 8(1)(a)):
  - The order is necessary or desirable for one or more purposes of SWERLA
  - the extent of the order is not broader (including geographically broader in application) than is reasonably necessary to address the matters that gave rise to the order.
  - the order does not breach section 11<sup>7</sup> of the SWERLA
  - the order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990.
77. The main steps of a review by the responsible agency are:
  - Approximately two months before a review begins, MfE informs stakeholders and Treaty partners about the information it is seeking, the relevant dates for the period to which the information refers, and opportunities for engagement.
  - MfE engages with internal and external stakeholders, and Treaty partners, to receive feedback on the use of the OICs and the impacts they are having.

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<sup>7</sup> Section 11 restricts the OIC from granting or modifying a requirement to release someone from custody or to have their detention reviewed, or from granting or modifying an exemption or restriction imposed by (for example) the New Zealand Bill of Rights Act 1990.

- MfE analyses the feedback and data received from stakeholders and Treaty partners. The draft options and recommendations for the Minister are reviewed by the Legal team and a Treaty impact analysis is completed before they are finalised.
- MfE advises the Minister on whether the OIC remains necessary or desirable, and whether changes are needed to ensure it remains fit for purpose. If the Minister agrees to changes, MfE will work with relevant parties on the amendments.
- Key information relating to reviews is published on the MfE website. MfE liaises with other government agencies, as appropriate, on the outcomes of reviews.

**In-Confidence**

Office of the Minister for the Environment

LEG - Cabinet Legislation Committee

**Severe Weather Emergency Recovery (Auckland Flood Resilience Works) Order 2024**

**Proposal**

- 1 I am seeking Cabinet authorisation for submission to the Executive Council of the Severe Weather Emergency Recovery (Auckland Flood Resilience Works) Order 2024 (the Order).

**Relation to government priorities**

- 2 The proposal in this paper reflects the priorities outlined in the Government's plan for a faster and fairer disaster recovery to expedite the consenting process and remove red tape to speed up the rebuild following Cyclone Gabrielle.

**Executive Summary**

- 3 This Order proposed under the Severe Weather Emergency Recovery Legislation Act 2023 (SWERLA) enables two flood resilience works projects in Auckland to be consented quicker than under normal Resource Management Act 1991 (RMA) pathways, allowing works to begin in the next earthworks season (summer 2024).
- 4 The Auckland Council requested this Order and at its meeting on 8 August 2024 the Auckland Council Transport and Infrastructure Committee resolved to "*support the proposed OIC, which will shorten the resource consent process for, and enable a timely delivery of, the Te Ararata and Harania catchment projects to reduce flood risk*".
- 5 The Order will modify the RMA to make the flood resilience works, which may otherwise have required complex discretionary or non-complying activity resource consents, into controlled activities, subject to appropriate conditions to deal with any adverse environmental and cultural effects. This will provide certainty to the council and community that the works will go ahead.
- 6 Officials have undertaken public engagement and targeted consultation with iwi, hapū and Māori, including Post Settlement Governance Entities (PSGEs), in the Auckland region. There was strong community support for the Order.
- 7 As required by the SWERLA, the draft Order and supporting materials were considered by the Regulations Review Committee (the Committee) and the Severe Weather Events Recovery Review Panel (the Review Panel). The Committee provided feedback on the truncating of appeal rights under SWERLA. I have considered the Committee's feedback on the approach to appeals, and I remain of the view that the Order should exclude RMA appeal rights (see paragraph 20 below). Access to the courts is preserved as judicial review remains available.

- 8 I am now seeking authorisation for submission to the Executive Council of the attached Order (Appendix 1).

## Background

- 9 SWERLA allows certain legislation, including the RMA, to be modified via Order in Council (OIC) to assist communities and local authorities affected by the severe weather events to respond to, and recover from, the impacts of the 2023 severe weather events. There is a comprehensive set of safeguards provided in SWERLA to ensure the OIC mechanism is used appropriately.
- 10 Auckland Council and the Tāmaki Makaurau Recovery Office have been working with the Ministry for the Environment and the Cyclone Recovery Unit (CRU) to enable an expedited consent mechanism via an OIC for two flood resilience projects in Māngere. The Council identified approximately 376 residential properties - including 56 in which there is an intolerable risk to life - which would benefit from the flood resilience works. The works are part of the Council's Making Space for Water programme to reduce flood risk across the region as part of Te Mahere Whakaroa mō Tāmaki Makaurau (the Tāmaki Makaurau Recovery Plan).
- 11 Following Cabinet's agreement to begin developing this Order [CAB-452 refer ECO-24-MIN-0137], officials began to prepare an Order that would modify the RMA to provide a streamlined consenting regime. The Order will provide certainty to the Council and Māngere communities that proposed flood resilience works will be consented in time for the next earth working season (summer 2024). The works will support homeowners and occupiers within Māngere to recover from the effects of the severe weather events in 2023.
- 12 Under SWERLA sections 8 and 9, public engagement must be undertaken on the proposals before I can recommend an OIC is made, and the draft OIC must be reviewed by the Review Panel and the Committee. The following analysis describes the feedback received and my decisions for subsequent changes to the Order.

## Analysis

### *Consultation Feedback*

- 13 The Ministry undertook public consultation on the proposed Order as required under SWERLA from 30 July until 23 August 2024. To provide an enhanced opportunity for feedback, engagement was extended beyond the statutory engagement minimum from 3 to 19 working days. Consulted stakeholders and partners included council, iwi, hapū and Māori, network utility operators, the public, and other government agencies. Parties were provided with information about the proposed Order and invited to engagement hui. The Ministry website also included information on the Order proposal, hui, and how to provide written feedback.
- 14 The Ministry held two online hui and one in-person hui. The in-person hui was held in conjunction with Auckland Council's Mana Whenua Engagement Forum on 9 August 2024. An online hui with Crown agencies was held on 13 August 2024, and another with the public on 15 August 2024. A total of 11 pieces of written feedback were received, including one petition in support of the Order with 200 signatures.
- 15 Feedback showed a high level of community support for the Order from affected Māngere residents with 200 people signing a petition saying that "*The severe weather*

*events have greatly impacted our area, and these projects are essential for protecting our homes and improving our community's safety".*

- 16 The Ministry also received feedback on matters that the proposed Order already addresses, including cultural values assessments, Māori involvement in the design and operational phases of the projects, and the ability of landowners and network operators to provide feedback following consent lodgement. Ministry officials have carefully reviewed this feedback and consider that these matters are sufficiently addressed by the provisions of the proposed Order.
- 17 No further issues were raised by officials from other Crown agencies. An overview summary of feedback can be found at Appendix 2.

*Severe Weather Events Recovery Review Panel Feedback*

- 18 Ministry officials received a report with recommendations from the Review Panel on 12 September 2024. The Panel advised that *"the Draft Order is "necessary or desirable" and "no broader than reasonably necessary" in terms of the Act."*
- 19 The Panel also suggested changes to the definition of "flood resilience works" in the Order to provide a stronger link to the empowering legislation (SWERLA). Ministry officials agree and changes have been made to the draft Order to reflect this.

*Regulations Review Committee Feedback*

- 20 The Committee considered the draft Order on 11 September 2024. In their letter the Committee raised one matter concerning the Order's proposal to remove RMA appeal rights and limit access to a court in accordance with Standing Order 327(2)(e). The Committee referred to their briefing on the truncating of appeal rights in secondary legislation in response to an emergency event, presented on 13 August 2024<sup>1</sup>. The Cyclone Recovery Unit (CRU) in the Department of the Prime Minister and Cabinet (DPMC) are coordinating the Government's response to this report in line with Standing Order 256.
- 21 I have had regard to the recommendations provided by the Committee but remain of the view that the Order should exclude RMA appeal rights. The Order aims to speed up recovery through streamlining the consenting of the flood resilience works, in a way that provides appropriate checks and balances. Removing appeal rights is justifiable in this context, as judicial review remains a safeguard. This approach is consistent with other Orders under SWERLA, including the Severe Weather Emergency Recovery Legislation (Hawke's Bay Flood Protection Works) Order 2024.

*Legally privileged – Crown Law Office views*

§ 9(2)(b)

[Redacted text block]

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<sup>1</sup> [Briefing on retrospective change of limitation periods and the truncating of appeal rights in secondary legislation in response to an emergency event \(selectcommittees.parliament.nz\)](https://selectcommittees.parliament.nz)



s 9(2)(h)

## Compliance

- 24 I am satisfied that the Order complies with section 8(1)(a)-(f), in particular that:
- 25 the Order is necessary and desirable for meeting the purpose of SWERLA;
- 26 the extent of the Order (including geographical extent) is not broader than is reasonably necessary to address the matters that gave rise to the Order;
- 27 the consultation process described in section 9 of SWERLA has been complied with;
- 27.1 the Order does not breach the restrictions set out in section 11 of SWERLA;
- 27.2 the Order is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990;
- 28 The Order complies with the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee; and
- 28.1 the draft Order has been reviewed by the Severe Weather Events Recovery Review Panel and the Regulations Review Committee.

### *Section 8(1)(e) of SWERLA*

- 29 Under section 8(1)(e) of SWERLA, if an Order relates to the RMA, I must consider:
- 29.1 the effects on the environment that could occur as a result of the Order; and
- 29.2 whether any adverse effects can be avoided, remedied, or mitigated.
- 30 The flood resilience works enabled under the Order may have an adverse effect on the environment. However, this Order includes environmental checks and balances that will address these effects.

### *Section 8(3) of SWERLA*

- 31 A range of changes were made to the Order as a result of the review process set out in SWERLA. In accordance with Section 8(3) of SWERLA, I do not consider that any of these changes are sufficiently different to mean that repeating this process would be appropriate.

### *Certification by Parliamentary Counsel*

- 32 The Parliamentary Counsel Office (PCO) has certified that the Order is in order for submission to Cabinet subject to waiver of the 28-day rule, and to the Order being made and then notified in the Gazette by 24 October.

## Review of this Order and existing Orders

- 33 Under section 12 of SWERLA there is a requirement for the relevant Minister to keep all orders they are responsible for under review. I am the relevant Minister for eight

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s 9(2)(h)

orders currently in effect. This review includes an assessment of determining whether I continue to be satisfied that an order continues to meet the necessary or desirable test.

- 34 To meet the requirement, I intend to undertake a formal review of all orders that the Minister for the Environment is the relevant Minister for by July 2025. This will occur at a time when the first consents under this Order should have been granted and summer earthworks should have been started.

### **Timing and 28-day rule**

- 35 I propose the 28-day rule be waived, so that the Order can come into force on 25 October 2024. Waiving the 28-day rule will provide certainty to Auckland Council and Māngere residents and enable flood resilience works that will protect at-risk communities. The Order will have effect until 31 March 2028.

### **Cost-of-living Implications**

- 36 The proposed Order aims to alleviate the significant social and economic burdens of the severe weather events on the community. It will bring certainty and clarity to residents, businesses, and the wider Māngere community by ensuring that flood resilience works can begin as soon as possible. Improving flood protection is one avenue to reduce insurance costs, and costs of future severe weather events.

### **Financial Implications**

- 37 The projects that this Order will enable are covered by the Crown Funding Agreement between Auckland Council and the Crown in response to the severe weather events of 2023.

### **Impact Analysis**

#### *Regulatory Impact Statement*

- 38 A quality assurance panel with members from the Ministry for the Environment's Regulatory Impact Analysis Team has reviewed the Severe Weather Emergency Recovery (Auckland Floor Resilience Works) Order Regulatory Impact Statement (RIS). The panel considers that it partially meets the quality assurance criteria.
- 39 The panel notes that the document is clear and concise and shows a clear need. It is convincing and complete to the extent allowed within the limitations of the existing evidence base.
- 40 The RIS is provided in Appendix 3.

#### *Climate Implications of Policy Assessment*

- 41 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

## Treaty of Waitangi Impact Analysis

- 42 During the development of the Order, Ministry officials analysed existing settlement legislation and statutory acknowledgements in the flood resilience works area and identified affected iwi and hapū. There are five settlement agreements that may be relevant in the works areas and one signed deed.
- 43 In areas that are subject to statutory acknowledgements, the consent authorities are required under the settlement legislation to give PSGEs a summary of each relevant resource consent application<sup>3</sup>. This requirement is not modified by the Order.
- 44 The RMA requires<sup>4</sup> the consent authorities to notify the PSGEs of each resource consent application for an activity within, adjacent to, or directly affecting a statutory area and to have regard to the statutory acknowledgement. The Order modifies the requirement for this notification, by instead requiring all relevant Māori entities, including PSGEs, to be notified and invited to make written comments on the consent application and for the consent authority to consider those written comments.
- 45 Clause 7(a)<sup>5</sup> of the RMA and the ability for Māori to retain kaitiaki responsibilities over both natural and physical resources under Article 2 of the Treaty is of particular importance as the flood resilience works will occur in or around rivers, estuaries, and the foreshore. This is addressed in schedule 2 of the Order which provides for consent conditions. Māori entities' representatives will provide the consent holder with on-site guidance to manage the impact of the flood resilience works on cultural values and other natural and physical resources.
- 46 The Order does not amend the Marine and Coastal Area (Takutai Moana) Act 2011. Ministry officials wrote to Takutai Moana applicants with application areas in the two flood resilience works areas in the Manukau Harbour. There was no response to the offer of an online hui specifically for this group, and no further feedback was received. Where flood resilience works are located in the CMA, the standard notification letter in accordance with Section 62(3) of the Marine and Coastal Area (Takutai Moana) Act 2011 will be required.

## Population Implications

- 47 A streamlined consenting process for the two project locations will provide clarity and certainty to affected homeowners, businesses, and communities in Māngere. The flood resilience works will benefit an estimated 376 properties by providing certainty that these homes will have increased protection from future flooding.

## Human Rights

- 48 The Order will engage section 27 of the New Zealand Bill of Rights Act 1990 (BORA) as it removes the public and limited notification processes and appeal rights under the RMA. In relation to the RMA, Ministry officials consider the proposal is a justified limit on the rights and freedoms under NZ BORA for the following reasons:

- 48.1 It is necessary to modify the public and limited notification processes because it will not be possible to secure all necessary resource consent processes in

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<sup>3</sup> RMA Section 42AA

<sup>4</sup> RMA Section 95B

<sup>5</sup> Clause 7(a) of the RMA states persons exercising functions and powers under it shall have particular regard to kaitiakitanga (the ethic of stewardship).

## IN CONFIDENCE

the required time frames for the project works if the usual processes under the RMA apply. In particular, the time frames associated with the RMA submission process (including notification, public submissions, and hearings) would prevent consents from being obtained in the required time frame.

48.2 The rights of persons to seek a judicial review are unaffected by the Order.

### Use of external Resources

49 No external resources were used in the preparation of this paper.

### Consultation

50 SWERLA requires engagement on all proposed OICs. I have had regard to the feedback received from this engagement, as outlined above (see Analysis). Appendix 2 provides a summary of the public engagement feedback.

51 The Ministry has consulted with the following agencies on this Cabinet paper and proposed Order: Department of Prime Minister and Cabinet (DPMC) (both the Policy Advisory Group (PAG) and the CRU), the Ministry for Primary Industries (MPI), Department of Conservation (DOC), the Ministry for Culture and Heritage (MCH), the Department of Internal Affairs (DIA), Land Information New Zealand (LINZ), Te Puni Kōkiri (TPK), the office for Māori Crown Relations – Te Arawhiti, Ministry of Business, Innovation and Employment (MBIE), the Ministry of Housing and Urban Development (HUD), the Ministry of Transport (MoT), and the Ministry for Regulation. No policy feedback was received.

### Communications

52 I will issue a press release at the appropriate time, in consultation with the Minister for Emergency Management and Recovery and the Auckland Council, if necessary.

### Proactive Release

53 I intend to proactively release this Cabinet paper and associated papers and minutes within 30 business days of final decisions being confirmed by Cabinet, subject to redaction as appropriate under the Official Information Act 1982.

### Recommendations

The Minister for the Environment recommends that the Committee:

1. **note** that the Severe Weather Emergency Recovery Legislation Act 2023 (SWERLA) established a mechanism for legislation to be modified via Order in Council to enable recovery activities following the severe weather events of early 2023;
2. **note** that the Cabinet Economic Policy Committee agreed that an Order in Council (Order) be made under SWERLA to modify the Resource Management Act 1991 (RMA) to streamline the RMA consenting process to enable flood resilience works in the Te Ararata and Harania catchments in Mangere, South Auckland. [ECO-24-MIN-0137 refers];
3. **note** that, as prescribed in SWERLA, there was public engagement on the proposal and the draft Order was reviewed by the Severe Weather Events Recovery Review Panel and the Regulations Review Committee and I have had regard to the comments

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provided by submitters and the recommendations provided by the Review Panel and the Committee;

4. **note** that the Cabinet Economic Committee authorised the Minister for the Environment to further refine or clarify any policy decisions relating to the proposals, in a manner not inconsistent with Cabinet decisions, if required [ECO-24-MIN-0137];
5. **note** that the Order has been amended in response to recommendations and that the changes fall within the Minister for the Environment's delegated authority;
6. **note** the Minister for the Environment is satisfied that:
  - 6.1 the requirements under section 8(1) of SWERLA are met including that the Order is necessary and desirable for meeting the purpose of SWERLA and the extent of the Order (including geographical extent) is not broader than is reasonably necessary to address the matters that gave rise to the Order;
  - 6.2 the consultation process described in section 9 of SWERLA has been complied with;
  - 6.3 the Order is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990; and
  - 6.4 the Order does not breach the additional restrictions set out in section 11 of SWERLA;
7. **note** that the Minister for the Environment has considered the effects on the environment that could occur as a result of the Order, and whether any adverse effects can be avoided, remedied, or mitigated;
8. **note** that a waiver of the 28-day rule is sought:
  - 8.1 so that the regulations can come into force as soon as possible;
  - 8.2 on the grounds that waiving the 28-day rule will provide certainty to Auckland Council and Māngere residents and enable flood resilience works that will protect at-risk communities;
9. **authorise** the submission to the Executive Council of the Severe Weather Emergency Recovery (Auckland Flood Resilience Works) Order 2024;
10. **agree** to waive the 28-day rule so the Order will come into force on 25 October 2024;
11. **note** that the Ministry for the Environment will undertake a formal review of this Order as part of the review of all Orders in Council that the Minister for the Environment is the relevant minister for by July 2025.

Authorised for lodgement

Hon Penny Simmonds  
**Minister for the Environment**

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## Appendix 2: Overview of feedback received from public engagement

Written Feedback			
#	Consulted Party	Feedback received	Potential treatment of feedback
1	s 9(2)(a)	<p><b>Comments:</b> Strongly supports the proposed OIC to accelerate flood resilience projects in their community. Considers that the OIC is essential to protect their homes and community's safety.</p> <p>Appreciates the steps being taken to expedite the process, and the inclusion of local communities.</p>	<p><b>Response:</b> Noted.</p> <p><b>Policy recommendation:</b> No change.</p>
2	s 9(2)(a)	<p><b>Comments:</b> Strongly supports the proposed OIC to accelerate flood resilience projects in their community. Considers that the OIC is essential to protect their homes and community's safety.</p> <p>Appreciates the steps being taken to expedite the process, and the inclusion of local communities.</p>	<p><b>Response:</b> Noted.</p> <p><b>Policy recommendation:</b> No change.</p>
3	s 9(2)(a)	<p><b>Comments:</b> Strongly supports the proposed OIC to accelerate flood resilience projects in their community. Considers that the OIC is essential to protect their homes and community's safety.</p> <p>Appreciates the steps being taken to expedite the process, and the inclusion of local communities.</p>	<p><b>Response:</b> Noted.</p> <p><b>Policy recommendation:</b> No change.</p>
4	s 9(2)(a)	<p><b>Comments:</b> Strongly supports the proposed OIC to accelerate flood resilience projects in their community. Considers that the OIC is essential to protect their homes and community's safety.</p> <p>Appreciates the steps being taken to expedite the process, and the inclusion of local communities.</p>	<p><b>Response:</b> Noted.</p> <p><b>Policy recommendation:</b> No change.</p>
5	s 9(2)(a)	<p><b>Comments:</b> Strongly supports the proposed OIC to accelerate flood resilience projects in their community. Considers that the OIC is essential to protect their homes and community's safety.</p>	<p><b>Response:</b> Noted.</p> <p><b>Policy recommendation:</b> No change.</p>

Written Feedback			
#	Consulted Party	Feedback received	Potential treatment of feedback
		Appreciates the steps being taken to expedite the process, and the inclusion of local communities.	
6	s 9(2)(a)	<p><b>Comments:</b> Strongly supports the proposed OIC to accelerate flood resilience projects in their community.</p> <p>Concerned around the consequences on future housing and possible flooding if no action is taken on Te Ararata Stream.</p> <p>Appreciates the steps being taken to expedite the process, and the inclusion of local communities.</p>	<p><b>Response:</b> Noted.</p> <p><b>Policy recommendation:</b> No change.</p>
7	s 9(2)(a)	<p><b>Comments:</b> Strongly supports the proposed OIC to streamline the resource consent process and enable flood resilience works to occur in parts of the Mangere catchments.</p>	<p><b>Response:</b> Noted.</p> <p><b>Policy recommendation:</b> No change.</p>
8	Kāinga Ora	<p><b>Comments:</b> Kāinga Ora supports the proposed OIC to enable the flood resilience works proposed for the Te Ararata and Harania catchments. They consider that the works will significantly benefit properties in the catchments.</p> <p>Notes that four Kāinga Ora properties on the Te Ararata Creek edge are proposed to form part of the new stormwater drainage reserve boundaries, and that Kāinga Ora's Urban Development and Delivery Group has been in consultation with Auckland Council (Healthy Waters Department).</p> <p>Requests to be included on the list of parties notified when the resource consents are lodged to:</p> <ul style="list-style-type: none"> <li>• be able to provide comments during the process; and</li> <li>• seek to identify opportunities to align and optimise with their future build programmes.</li> </ul>	<p><b>Response:</b> Officials acknowledge the support of Kāinga Ora. It is noted that the proposed OIC requires that the consent authority must, upon lodgment of an application under the OIC, notify the owners and occupiers of land on which the works are to be undertaken or of land whose boundary adjoins the land where the works are to be undertaken. This requirement will ensure that Kāinga Ora, as landowners in and adjacent to the works areas, will be notified as they have requested.</p> <p><b>Policy recommendation:</b> No change.</p>
9	Te Ākitai Waiohau Waka Taua Incorporated (the	<p><b>Comments:</b> The Society accepts the purpose of the proposed OIC and understands why Auckland Council requested the proposed OIC for the Te Ararata and Harania sites where human life and property are at risk.</p>	<p><b>Response:</b> Officials acknowledge the Society's feedback on the purpose of the proposed OIC and the need for increasing the speed of the consenting process.</p>



Written Feedback			
#	Consulted Party	Feedback received	Potential treatment of feedback
	Society) <sup>s 9(2)(a)</sup>	<p>The Society does not object to increasing the speed to the resource consent process under the proposed OIC. However, they note that the conditions and matters of control of the proposed OIC must consider the cultural and environmental values and expressly address cultural concerns raised by Mana Whenua iwi including Te Ākitai Waiohau.</p> <p>The Society requests an inclusion of Cultural Values Assessment (CVA), Cultural Impact Assessments and associated recommendations raised by iwi with the list of technical documents used in the proposed OIC. They note that Te Ākitai Waiohau CVA's for Te Ararata and Harania are available upon request.</p> <p>From a kaitiakitanga perspective, the Society has concerns about the removal of indigenous vegetation in both flood works catchments. They oppose the development of a large pipe bridge as part of the Harania flood resilience works for infrastructure purposes.</p> <p>To alleviate the raised concerns, the Society expects ongoing engagement with Te Ākitai Waiohau for both project sites, including:</p> <ul style="list-style-type: none"> <li>• Cultural process – blessings, cultural inductions before works, iwi monitoring of works to ensure compliance, accidental discovery protocol and archaeology authorities for midden or archaeological artefacts uncovered during works;</li> <li>• Design process – integration of project detailed design with cultural names, concepts, history, artwork and narratives;</li> <li>• Project works – management of rubbish clearance in the coastal marine area, stormwater and water quality effects, local ecology and fish management as well as detailed landscaping and native planting plans; and</li> <li>• Pipe bridge – assessing design and infrastructure requirements, alternative options and mitigation measures for constructing a pipe bridge designed for sewer overflow.</li> </ul>	<p>The proposed OIC includes steps to ensure engagement occurs (consent authority to invite Māori entities to provide written comments on the application). Requirements of the application documents in the proposed OIC include a description of cultural values in the works area that have been identified by a relevant Māori entity, and an assessment of all potential effects of the works.</p> <p>In addition, the proposed OIC includes a requirement for the appointment of Māori entity representatives for the duration of the construction works. The appointed representatives provide cultural indicators and guidance on cultural monitoring. The conditions of consent in the proposed OIC also require the consent holder to take into account any cultural indicators, when preparing any environmental management plans for construction as required under the OIC conditions.</p> <p>The proposed OIC is intended to streamline aspects of the resource consent process. It will not predetermine the engineering or concept design of the flood works. Officials note that Auckland Council is leading separate engagement on the flood works for each location.</p> <p><b>Policy recommendation:</b> No change.</p>

Written Feedback			
#	Consulted Party	Feedback received	Potential treatment of feedback
		The Society requests that the fundamental concerns raised need to be addressed before Te Ākitai Waiohau can support the process to progress the proposed flood works in the catchments.	
10	Māngere Residents (200 form submissions)	<p><b>Comments:</b> Bulk submission of 200 Māngere residents which stated that they: Strongly support the proposed OIC to accelerate flood resilience projects in their community. Consider that the OIC is essential to protect their homes and community's safety.</p> <p>Appreciate the steps being taken to expedite the process, and the inclusion of local communities.</p>	<p><b>Response:</b> Noted.</p> <p><b>Policy recommendation:</b> No change.</p>
11	s 9(2)(a)	<p><b>Comments:</b> Strongly supports the proposed OIC to accelerate flood resilience projects in their community. Considers that the OIC is essential to protect their homes and community's safety.</p> <p>Appreciates the steps being taken to expedite the process, and the inclusion of local communities.</p>	<p><b>Response:</b> Noted.</p> <p><b>Policy recommendation:</b> No change.</p>

Hui Feedback			
Mana Whenua Engagement Forum – 9 August 2024			
#	Consulted Party	Feedback received	Potential treatment of feedback
12	Mana Whenua Engagement Forum	<p><b>Comments:</b> Participants of the forum are generally supportive of the purpose of the proposed OIC.</p> <p><b>Questions:</b> How can the Order in Council amend the RMA?</p> <p>What precautionary measures will be put in place to ensure that any concerns raised in consultation process are fully accommodated, given there is no appeal process?</p> <p>Does the Order in Council impact who can respond in an emergency event?</p> <p>How did iwi in Hawkes Bay respond to the Order in Council? What did you learn from that process?</p>	<p><b>Response:</b> SWERLA enables the Minister to grant exemptions from, modify or extend any part of the Resource Management Act. This proposal does not propose to amend Part 2.</p> <p>While the appeal right to the Environment Court has been removed, the judicial review pathway is still available. The proposed conditions will require input from Māori entities throughout design and construction, including direct engagement with a project engagement manager.</p> <p>The Order does not affect who can respond in an emergency event.</p> <p>Lessons learnt included ensuring consultation with a broad list of people, establishing clear accidental discovery protocols in conditions and being specific about locations and scope of works.</p> <p><b>Policy recommendation:</b> No change.</p>

MfE hosted Public Hui – 15 August 2024			
#	Consulted Party	Feedback received	Potential treatment of feedback
13	s 9(2)(a)	<p><b>Questions:</b> Where can we find out the flood status of specific properties?</p>	<p><b>Response:</b> Information about flood risk of properties can be found on the Land Information Memorandum (LIM). Further information can be found on the Auckland Council website, or by requesting the property file.</p> <p><b>Policy recommendation:</b> No change.</p>
14	s 9(2)(a) (Vector)	<p><b>Questions:</b> Will utility asset relocations/alterations be</p>	<p><b>Response:</b> Auckland Council has confirmed that utility asset relocations/alterations will be included. This will be included as part of the resource consent application.</p>

	included in the Auckland Council resource consents?	<b>Policy recommendation:</b> No change.
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MfE hosted Crown Agencies Hui – 13 August 2024			
#	Consulted Party	Feedback received	Potential treatment of feedback
15	s 9(2)(a) (Kāinga Ora – )	<b>Comments:</b> Aware of the projects and the benefits of the flood resilience works. Strongly supports the proposed OIC and its purpose of expediting the resource consent process to speed up the start of the construction of the flood resilience works for the safety of the catchments.	<b>Response:</b> Noted.  <b>Policy recommendation:</b> No change.
16	s 9(2)(a) (Kāinga Ora – )	<b>Questions:</b> Why will an independent commissioner be the decision maker for the resource consents that fall under the proposed OIC and not Auckland Council?	<b>Response:</b> It is standard practice for Auckland Council to assign an independent commissioner as the decision maker when they are the applicant for the resource consents. This existing process is embedded into the proposed OIC for consistency and to provide assurance to the public.  <b>Policy recommendation:</b> No change.
17	s 9(2)(a) (Department of Conservation – )	<b>Questions:</b> How much of the work is part of the Bluegreen Network projects?	<b>Response:</b> The flood resilience works under the proposed OIC are part of the wider Making Space for Water package. Officials note that Auckland Council consulted on the Making Space for Water package through the Tāmaki Makaurau Recovery Plan which was approved by the Governing Body.  <b>Policy recommendation:</b> No change.

# Regulatory Impact Statement: Severe Weather Emergency Recovery (Auckland Flood Resilience Works) Order 2024

## Coversheet

Purpose of Document	
Decision sought:	This analysis will inform Cabinet decisions on the proposed Severe Weather Emergency Recovery (Auckland Flood Resilience Works) Order 2024
Advising agencies:	Ministry for the Environment
Proposing Ministers:	Hon Penny Simmonds, Minister for the Environment
Date finalised:	4 October 2024
Problem Definition	
<p>Following the Auckland Anniversary Weekend floods and Cyclone Gabrielle (the severe weather events) in January and February 2023, several locations across the Auckland region were identified where critical safety enhancements and improvements to the resilience of infrastructure specific to flood control and mitigation ('project works') are required. Two locations in the Auckland region (Harania and Te Ararata catchments) have been identified amongst the worst affected areas in Auckland with approximately 376 affected properties, including at least 56 properties where there is an intolerable risk to life (Category 2 or 3).</p> <p>The project works have been identified as a key action in <a href="#">Te Mahere Whakaroa mō Tāmaki Makaurau (the Tāmaki Makaurau Recovery Plan)</a> and supported by the <a href="#">Making Space for Water programme of works</a>. The works are covered by the Crown Funding Agreement between Auckland Council and the Crown and is funded in the Long-Term Plan.</p> <p>The key policy issue this proposal seeks to address is to ensure that affected homeowners in the catchments of Te Ararata and Harania are not left in situations of uncertainty of intolerable risk for prolonged periods of time. The project works would usually require a resource consent under the Resource Management Act 1991 (RMA). However, the pathway these consents would take is complex and is likely to take more than 12 months<sup>1</sup>. This would have serious impact on people who own houses identified as Category 2 and 3 properties which have an intolerable risk to life from flooding and/or landslides in Auckland.</p> <p>Auckland Council have requested an Order in Council (OIC) to address and speed up the project works to support the protection of residential properties in the Harania and Te Ararata catchments in Māngere, South Auckland.</p>	

<sup>1</sup> Likely timeframes include design and document preparation taking 6 months, notification process taking 20 working days, submissions allowing 20 working days, hearing process if required taking 45-75 working days and then a decision being 15 working days after the hearing or 30 working days after lodgement if consents are non-notified, in addition to possible appeals.

Auckland Council is anticipating the flood recovery project works will begin in the summer of 2024/2025 and be completed by July 2026 to ensure works begin in time with earth moving season. This timeframe has been set to speed up the recovery efforts to increase protection against flooding in south Auckland and prevent the 376 homeowners being left at continued risk of intolerable flood risk. This is dependent on necessary resource consents being obtained beforehand.

## **Executive Summary**

### **Background**

In January and February 2023, the Auckland Anniversary Weekend flood and Cyclone Gabrielle (severe weather events) caused significant damage across the North Island and in particular across Auckland. The flooding as a result of the severe weather events has left many homeowners and occupiers across Auckland facing uncertainty about future flood risk. As a result of the severe weather events, a significant amount of water, silt and other materials was deposited into stormwater channels and systems, blocking streams, culverts and outflows. This has further compromised the capacity of the local stormwater network. At the time of the events and subsequently, these blockages caused flooding that would otherwise not have occurred if the stormwater management systems were working correctly.

### **Progress towards recovery**

Proposed works look to alleviate blockages and restrictions to flow which resulted in the significant flooding. These works may include new culverts and/or bridges, upgrades to existing culverts and/or bridges, works to divert streams and stormwater, earthworks, vegetation works, and mangrove clearance.

The construction of the project works requires enabling provisions to be progressed urgently to ensure that affected homeowners and occupiers are not left in situations of uncertainty of intolerable flood risk for prolonged periods of time.

The project works require resource consents under the RMA. The consents are complex and require a streamlined process to ensure the works can be in place in time to enable recovery. The resource consents are a major component of the recovery programme, with significant implications to the delivery of the project works if consents are delayed.

### **Options considered**

Ministry for the Environment (MfE) officials have reviewed all potential pathways that may be available to ensure the works are completed in the minimum length of time and with most certainty for the Auckland community.

MfE officials have considered nine options for addressing the key policy problem via the RMA including the status quo RMA consenting, alternative RMA consenting, plan changes and Fast-track consenting.

### **Preferred option**

MfE officials recommend an Auckland Flood Resilience Works OIC (Option 2) be developed to address the key problem as identified.

### **Impacts of the preferred option**

The preferred option will have benefits of speeding up the recovery in Māngere, South Auckland by temporarily modifying RMA regulatory barriers, easing the procedural burden



on council, until 31 March 2028. It does risk environmental impacts through the project works, and therefore requires comprehensive communications and engagement planning, and ongoing monitoring to ensure the works minimise any adverse environmental effects. A summary of potential adverse environmental effects of the flood resilience project works and proposed management measures is attached in Appendix 1.

## Consultation

Officials undertook public consultation from 30 July until 23 August 2024 where feedback was sought on the OIC proposal. This public engagement is a requirement of SWERLA before the Minister can recommend an OIC be made. During this consultation period MfE officials sought feedback on the OIC pathway to supporting the recovery efforts in the area following the severe weather events. Feedback was sought from key stakeholders and partners, including council, iwi, hapū and Māori, network utility operators, the public, and other government agencies.

During this period, the MfE held two online hui (one online public webinar, one Crown Agencies hui) and presented to the Auckland Council Transport and Infrastructure Committee. MfE also presented to the in-person hui with Auckland Council's Mana Whenua Engagement Forum. MfE's website also provided information on the OIC proposal, hui information and how to provide feedback.

A total of 11 written submissions were received including one petition in support of the OIC proposal with 200 signatures.

From the consultation, there was strong support for the key policy proposals to

- Accelerate flood resilience projects in the Māngere community, and
- Seek local input to the OIC.

Some residents saying that: *"The severe weather events have greatly impacted our area, and these projects are essential for protecting our homes and improving our community's safety."*

Te Ākitai o Waiohua Waka Taua Incorporated (the Society) requested through their written feedback that they would like to see the inclusion of Cultural Values Assessments (CVA), Cultural Impact Assessments and associated recommendations raised by iwi with the list of technical documents used in the proposed OIC. From a kaitiakitanga perspective the Society had concerns with the removal of indigenous vegetation in both flood works catchments. The Society also opposed the development of a large pipe bridge as part of the Harania flood resilience works for infrastructure purposes. To address these concerns, the Society expects to have ongoing engagement in the flood resilience works projects as part of the OIC.

MfE officials reviewed the submission received from the Society and considered that the OIC proposal already provides for these matters and no further changes were required.

The draft OIC and proposal was considered by the Severe Weather Events Recovery Review Panel (the Review Panel) and the Regulations Review Committee (the Committee). The Review Panel concluded the OIC as 'necessary or desirable' and 'no broader than reasonably necessary' in terms of SWERLA. The Review Panel recommended the draft OIC itself could be improved by the inclusion of an express reference to the controlling purpose of SWERLA in the description of the flood resilience works.

## Limitations and Constraints on Analysis

### Limitations on the problem definition or options considered

#### *Timeframes*

The policy issue relies upon data and information provided by Auckland Council as the requestor for this OIC. The data and information have informed this Regulatory Impact Statement.

The main constraint, on both the problem definition and the options considered, has been the timeframes for commencement of the flood resilience works. These project works are expected to commence in summer 2024/2025 to align with the next earth working season. The alternative under the standard RMA processes would likely not begin prior to summer 2025/2026 or possibly even a year later. This timeframe has been set to speed up the recovery efforts to increase protection against flooding in south Auckland and prevent affected homeowners from being left in situations of uncertainty of intolerable flood risk for prolonged periods of time. However, to achieve the summer 2024/2025 timeframe there are limited legislative options that provide the needed expediency and certainty to meet this timeframe.

It is proposed that an OIC be made under the Severe Weather Emergency Recovery Legislation Act 2023 (SWERLA), as this provides a mechanism for developing OICs that modify existing legislative processes and requirements to respond to and recover from the impacts of the severe weather events of 2023. This OIC will be modelled on the Severe Weather Emergency Recovery (Hawke's Bay Flood Protection Works) Order 2024.

This proposal is for an OIC for a streamlined consenting process for flood resilience works limited to two locations in the Auckland region (Harania and Te Ararata).

There is a limitation on time and this policy issue is urgent. The key reasons for the high level of urgency are:

- Even 18 months on from the severe weather events, these works are still urgent and critical. Affected homeowners and occupiers in the catchments of Te Ararata and Harania continue to face uncertainty and risk to future flooding and severe weather events.
- The works are necessary to ensure that residential land in the Auckland region preliminarily identified as Category 2C can safely shift to Category 1. Both the Te Ararata and Harania catchments flooded again in May 2024 during a storm and while no evacuations were required, the 376 households (including 195 Kāinga Ora homes) living in these catchments will continue to feel stress and anxiety during any heavy rainfall event until flood recovery measures are in place and allowing these communities to feel safe once again.
- The project works involve construction, earthworks, stream realignments and new structures. These require long lead-in times to finalise options, complete engineering design, and to procure resource and confirm contracts. In places, works are limited to the standard construction season (ie, October to April) to ensure environmental effects (eg, sediment runoff) are managed. Auckland Council has stipulated that the consents need to be in place (granted) in time for the works to commence in summer 2024/2025. Therefore, the OIC needs to be in place 30 working days before the RMA clock stops for the calendar year (19 December 2024). This equates to an enactment date for the OIC around the end of October at the latest to provide for the 30 working days (for example 20 December – 30 WDs

= 8 November 2024). Construction (civil/physical works) is estimated to take at least one year, working within the October to May earthworks period and other limitation on the timing of the earthworks within the blue-green network.

- All possible alternative consenting pathways have been assessed and none can deliver the consents in time, whilst being efficient, managing risks and upholding Treaty obligations, in order to achieve the milestones in [Te Mahere Whakaroa mō Tāmaki Makaurau \(the Tāmaki Makaurau Recovery Plan\)](#) work programme. The estimated total costs of these projects is \$53.84 million. The council portion of this funding has been approved as part of the overall Making Space for Water budgets through the Long Term Plan 2024-2034 and the works are a key action in [the Tāmaki Makaurau Recovery Plan](#).
- If the timeframe is unable to be met, around 376 affected properties will remain at risk of further flooding.
- Auckland Council has advised that there is no certainty that the Harania and Te Ararata projects would proceed without shared Crown funding of the projects. Reducing the budget for these works by removing the Crown funded proportion would affect viability and project value. If not delivered via the shared Crown/Council funding mechanism, then these projects would likely be competing against other projects for council funding and therefore would have no certainty of delivery at this time.
- There is no need to delay implementation to consider design alternatives, as the detailed design phase and the reworking of design can occur concurrently with the preparation of this proposed OIC to enable the for both processes to run as efficiently as possible. Likewise, the final detailed design can be completed concurrently with the subsequent resource consent process and implemented subject to conditions of consent.

#### *Consultation and data collection*

The policy issue relies upon data and information provided by Auckland Council as the requestor for this OIC and supplemented by the feedback received during the public consultation period. This information supports and feeds into this RIS.

Public consultation was undertaken over a four-week period totalling nineteen working days. SWERLA requires a minimum of 3 working days for statutory engagement. MfE extended the consultation in recognition of te Tiriti o Waitangi and the Crown's requirement to engage with iwi, hapū, mātāwaka, takutai moana applications and PSGEs in the spirit of partnership. In addition to fulfilling the statutory requirements outlined in SWERLA, MfE needs to engage with all those affected by the policy proposals to ensure the legislative measures are sound and fit for purpose.

**Responsible Manager(s) (completed by relevant manager)**



Dáire Queenan  
Manager  
Adaptation System  
Ministry for the Environment

**Quality Assurance (completed by QA panel)**

Reviewing Agency: Ministry for the Environment

Panel Assessment & Comment: A quality assurance panel with members from the Ministry for the Environment’s Regulatory Impact Analysis Team has reviewed the Regulatory Impact Statement: Severe Weather Emergency Recovery (Auckland Flood Resilience Works) Order 2024. The panel considers that it **partially meets** the Quality Assurance criteria.

The QA panel notes that the Regulatory Impact Statement: Severe Weather Emergency Recovery (Auckland Flood Resilience Works) Order 2024 is clear and concise and shows a clear need. It is convincing and complete to the extent allowed within the limitations of the existing evidence base. As consultation was limited, however, there remains a risk of unidentified impacts.

# Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

**Current state within which action is proposed (status quo)**

## Impacts of severe weather events in January and February 2023

1. In January and February 2023 there were significant and severe weather events experienced across the North Island, including Cyclone Gabrielle and the Auckland Anniversary Weekend floods. As a result of the severe weather events, significant amounts of water, silt and other materials were deposited in stormwater channels and systems, blocking streams, culverts and outflows. The urban Harania and Te Ararata catchments, located in Māngere, South Auckland, were amongst the worst affected areas in Auckland, leaving many homeowners and their homes at risk to life.
2. The project works are expected to reduce the number of dwellings with intolerable risk to life from 56 to 5 as shown in Table 1 below.

**Table 1 Residual risk from project works**

Property Risk	Definition	Dwellings with risk on 27 January 2023	Dwellings with risk after project
<b>Intolerable risk to life</b>	Intolerable risk to life using a rapid risk assessment methodology where the flood level from the January 2023 event was likely in excess of 0.5 m above floor level and the house was surrounded by floodwaters.	56	5
<b>Habitable floor flooding</b>	Properties where the rapid risk assessment methodology indicated that the flood level was likely to be above a habitable floor level.	159	10



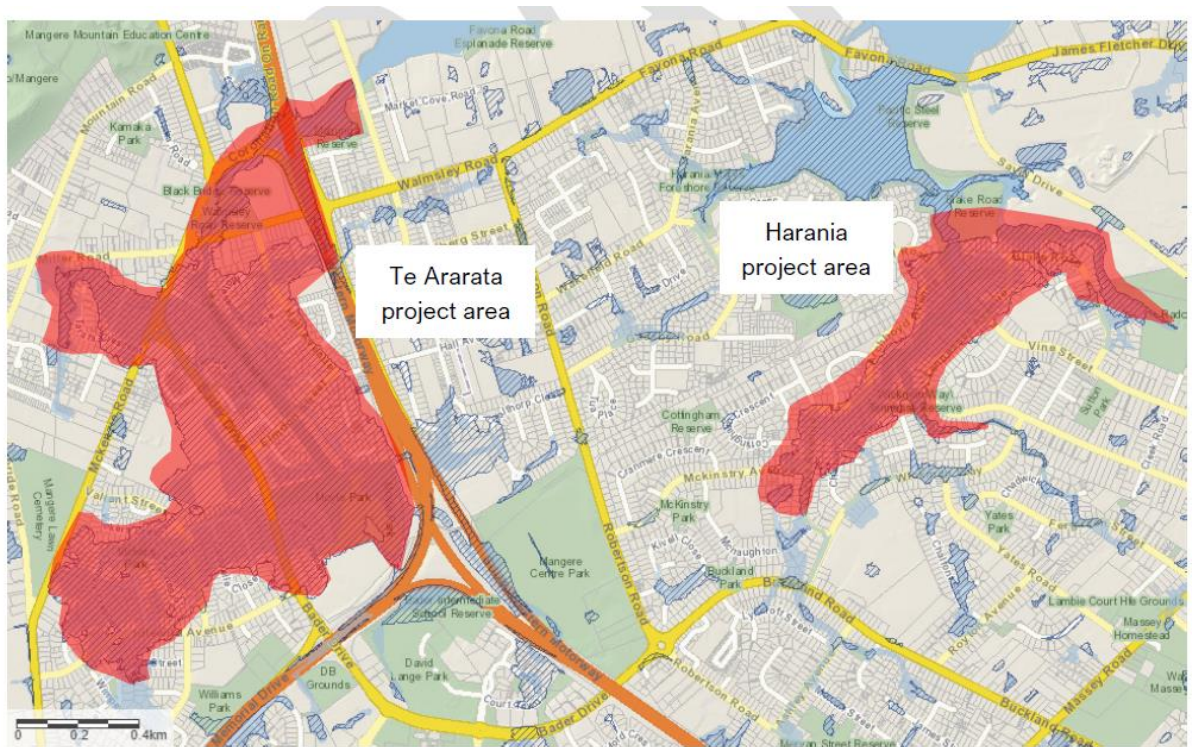


Figure 1 The proposed works aim to reduce the risk from significant flood prone areas of Māngere within the two catchment sites shown in red

3. The North Island's recovery from severe weather events in January and February 2023, including Cyclone Gabrielle, is an ongoing concern. Significant areas of land remain severely damaged by flood waters, silt and landslide and are still susceptible to flooding particularly in the Auckland region.
4. The impact of the Auckland Anniversary Weekend flooding and Cyclone Gabrielle (severe weather events) were felt across the whole of the Auckland region. In Te Ararata and Harania as flood levels rose in the creeks, water overflowed the banks of the creeks and entered people's homes causing significant damage and evacuation.

Auckland Council have requested this OIC to address and speed up the recovery efforts to increase protection against flooding in south Auckland. The two locations of Te Ararata and Harania were identified as priority areas in the Making Space For Water programme of works for council funding.

#### **How is the status quo expected to develop if no action is taken?**

5. The status quo is that there is no OIC in place. The standard process under the RMA would be used to obtain the relevant resource consents that are needed under the unitary plan and national environmental standards.
6. The proposed project works are likely to be classified as discretionary and non-complying activity consents under the Auckland Unitary Plan, the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 and the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.
7. Obtaining resource consents under the standard consents process in the RMA may require limited or full public notification meaning that the planned delivery timeframe for



the flood works project is at risk and may be pushed out by a year due to timing and seasonality of the work.

8. If the status quo RMA consenting option is pursued, the likely outcome/impact is:
  - The project works would not start for another year meaning private residential and crown/council owned land remains subject to flooding risk, property damage and risk to life
  - Continued stress and uncertainty for South Auckland residents
  - Longer timeframe and increased uncertainty to achieve completion of the overall programme if not advanced as a centrally funded project
  - Longer timeframes and greater uncertainty as to outcomes when seeking resource consents under standard processes
  - Significant cost and resourcing issues for the Auckland Council to prepare resource consent applications, and as the consent authority, process them
  - Loss of investment certainty on the part of affected landowners, local communities and Kāinga Ora due to ongoing questions as to whether the land in Category 2 areas can be reclassified as Category 1.

### **Key features and objectives of the regulatory system currently in place**

9. OICs are made under the Severe Weather Emergency Recovery Legislation Act 2023 (SWERLA), which came into force on 13 April 2023 and expires on 31 March 2028. The principal purpose of the SWERLA is to assist communities and local authorities affected by the severe weather events to respond to, and recover from, the impacts of the severe weather events of 2023. It provides for planning, rebuilding, and making safety enhancements and improvements to the resilience of land and infrastructure.
10. The SWERLA also supports enabling other legislation to be relaxed or operate more flexibly to support recovery. It enables OICs to be made that modify other legislation, relieving those affected by the severe weather events from overly burdensome legislative requirements. Modifications are also permitted where necessary to enable prompt action for an efficient and timely recovery. The SWERLA requires that OICs must be necessary or desirable for the purposes of the SWERLA.
11. The SWERLA contains a list in Schedule 2 of the 27 specified Acts which may be amended by an OIC and further instructions of the availability of others Acts which may be amended (clauses 28-32 of Schedule 2 of the SWERLA).
12. Consents for the project works are required under the RMA, which promotes the sustainable management of natural and physical resources and sets rules and requirements to manage activities. Decisions made under the RMA are usually the responsibility of regional and district/city councils, through regional policy statements, plans, and resource consents. Apart from the standard pathway for obtaining resource consents under the RMA, other pathways also exist. These are assessed in this RIS further paper below.

### **Key legislation of relevance**

13. All options in this RIS are limited to RMA processes (as SWERLA includes the RMA as a specified Act that can be amended via the OIC mechanism).

## What is the policy problem or opportunity?

### The nature, scope and scale of the problem

14. The North Island of New Zealand experienced severe weather events in January and February 2023, including Cyclone Gabrielle, resulting in substantial damage to the economy, infrastructure, natural environment, and community wellbeing. In Māngere, resulting flooding left homeowners and communities continuing to be exposed to significant level of flood risk to their homes.
15. Replacement and upgrades for infrastructure has been identified as a key action in the Tāmaki Makaurau Recovery Plan. The Making Space for Water programme of works identifies Te Ararata and Harania as the first two projects underway in the planned blue-green network projects. The works are funded in the Long-Term Plan. The Tāmaki Makaurau Recovery Plan was approved in January 2024 and Auckland Council's Governing Body adopted the Long-term Plan 2024-2034 on 27 June 2024 which set out local government funding for the works.
16. Two locations in the Auckland region (Harania and Te Ararata) have been identified for this proposed OIC as areas where there are approximately 376 affected properties, including at least 56 properties where there is an intolerable risk to life.
17. The policy problem is that flood recovery works needed in Te Ararata and Harania, and the property owners and residents in these areas are facing sustained risk exposure and uncertainty which is an unacceptable situation. MfE has reviewed all potential consenting pathways to determine the most appropriate and expedient pathway available for consenting of the works. (see Table 1 below).
18. The key reason to look for ways to progress consenting faster than the currently available RMA consenting pathway are:
  - a. the project works are necessary to ensure properties preliminarily identified as Category 2 can safely shift to Category 1. A significant number of residents are currently in limbo facing ongoing flooding risks
  - b. the flood resilience works are substantial which require lead in times including procuring contractors. These contracts would need to be in place prior to the construction period (summer 2024/2025) the only pathway that would allow the works to start in time for summer 2025/2026 (namely by summer 2024/2025) is the OIC pathway.
  - c. The pathways available under the status quo would allow the work to start no earlier than earthmoving season 2025/2026.

### Who is affected by this issue?

19. While this is an Auckland-wide issue, the urban communities of Harania and Te Ararata, specifically the owners and residents of 376 properties (including 195 Kāinga Ora properties) identified as being affected by the NIWE (including at least 56 where there is an intolerable risk to life) will be the most affected by the resolution of this policy issue. If the project works do not start until 2025/2026 (due to standard consenting timeframes or possible consenting or funding delays) there will be serious and significant impacts on the landowners and tenants of those properties in terms of stress and anxiety while they wait for the project works to protect their homes.
20. As the project works have co-benefits within the catchments, such as flood protection for council owned assets (e.g. open space reserves), the wider public will also be

affected by the timeframes for the completion of the project works. The impacts on households are of a different scale or size.

### What objectives are sought in relation to the policy problem?

21. The objectives are for both locally led, central government supported approach that enables flood recovery works to be undertaken in a manner that is timely and provides certainty to Māngere residents. This will mean:
  - a. People and communities in Māngere can recover from the effects of the severe weather events through the construction of flood recovery works and supporting infrastructure
  - b. Enabling provisions can be progressed in time for project works to begin in summer 2024/2025 and completed by July 2026 to ensure that affected homeowners are not left in situations of uncertainty of intolerable flood risk for prolonged periods of time.
22. In designing a policy intervention, officials are mindful of the Coalition Government's commitment to upholding redress in Treaty of Waitangi settlements, and to managing adverse impacts on the environment.

## Section 2: Deciding upon an option to address the policy problem

### Focus of this Regulatory Impact Statement

23. This RIS discusses options for addressing the Auckland region's NIWE recovery, considers key benefits and assesses whether there are any risks or unintended consequences with the preferred options. This RIS is being provided as the final steps of the OIC development.

### What criteria will be used to compare options to the status quo?

24. We have used the following criteria to compare the different options. The criteria are equally weighted. Consideration was given towards potentially weighting expediency and effectiveness higher than the other criteria, however they have been given equal weighting given that they are interdependent. This reflects how they influence the other criteria. For example, if one option scores highly in effectiveness it will be also score highly in expediency and costs reduction whilst still upholding Crown obligations under Te Tiriti and managing the environmental and unintended risks.
  - a. **Expediency** – the ability of the option to achieve the outcome sought in the quickest timeframe.
  - b. **Effectiveness** – the ability of the option to support cyclone recovery in the local community.
  - c. **Cost** – the ability of the option to achieve the outcome sought with the lowest financial cost.
  - d. **Uphold Crown obligations under Te Tiriti o Waitangi** – the ability of the option to honour the Treaty and uphold Treaty settlements and other arrangements.
  - e. **Manage risks** – the potential of the option to result in unintended consequences.

### What scope will options be considered within?

25. All the options are limited to RMA processes (as the SWERLA provides an ability to modify the RMA via an OIC mechanism, as set out in Schedule 2 of the SWERLA). The different options are considered in the section below. The main criteria for the options are the timeframes, efficiency, potential costs involved, upholding Crown obligation under Te Tiriti o Waitangi and overall managing of risks.
26. The project works may also require permits and authorisations under the Conservation Act, which is administered by the Department of Conservation (DOC). Although no need for permissions has been identified to date, DOC has given an undertaking to prioritise processing of any applications related to the project works. It is expected no changes are required to be made to the Conservation Act via an OIC.
27. There are no other viable non-legislative options as the projects will need to obtain a resource consent (under any of the existing RMA consenting pathways, or under the proposed OIC).
28. One non-legislative option that involves obtaining a resource consent is direct referral to the Environment Court. Further analysis of this as an option is provided in Option 5 and Table 1 below.

## What options are being considered?

### *Option 1 – Status Quo RMA consenting pathway*

29. The status quo provides for the standard RMA resource consenting pathway. The project works would require resource consents under the Auckland Unitary Plan and potentially some national environmental standards:
  - a. Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NESF)
  - b. Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES-CS)
30. When bundled together, the consents sought for each of the project works is likely to be classified as either a discretionary or non-complying activity.
31. The standard consenting pathway is likely to involve lengthy timeframes (due to potential for hearing processes and appeals), and uncertainty in outcome of the final decision due to likely discretionary or non-complying activity classification. During this time, South Auckland residents and Crown/council owned land would remain subject to flooding risk, property damage and risk to life.
32. Under the standard resource consenting pathway, the applications are likely to be publicly notified as it is unlikely that sufficient information will be available to confirm there are no adversely affected parties (or written approvals obtained). The public submission, hearing and determination process is estimated to take 12 months.
33. The standard consenting pathway also has a risk of further delay through appeals lodged to the Environment Court.

### *Option 2 – Auckland Council Flood Recovery Works Order in Council*

34. This option proposes an OIC be progressed under the SWERLA to modify the RMA to streamline the resource consenting process to provide for the recovery works as controlled activities.
35. The streamlined consenting process would see the recovery project works processed as controlled activities, non-notified and with no appeal rights under the RMA.
36. This option would also allow for the recovery works to begin in time for summer 2024/2025 and with greater certainty in comparison with the status quo, as the consents would be processed as controlled. This means consents must be granted (with possible conditions and matters of control which will avoid, remedy or mitigate adverse environmental effects). Requirements for public notification and hearings would be removed under this option, and rights of appeal to the Environment Court would also be removed. This option is expected to take approximately five to seven months.
37. The duration of consents obtained via the OIC pathway would be limited to five years. It is proposed that any consents with enduring duration would be limited to a maximum of five years. After this time the Auckland Council will have to apply for consent using the standard consenting process if they wish to retain the consented element granted under the OIC. This ensures that the council are not provided with

any enduring consents beyond five years that may broaden the purpose of the works beyond that allowed under the SWERLA. This is the same approach that was used in the Severe Weather Emergency Recovery (Hawke's Bay Flood Protection Works) Order 2024.

38. The OIC option provides greater certainty to council and community comparative to the standard RMA consenting process and will accelerate the recovery process (because the works will be granted consent under controlled activity status). If the status quo option is pursued, then the consents may be processed as either discretionary or non-complying activity, which adds uncertainty and additional time to the project timeframes.
39. This includes requirements to ensure engagement occurs (where the consent authority invites Māori entities to provide written comments on the consent applications) as well as a condition for the appointment of Māori entity representatives for the duration of the construction works. The appointed representatives provide cultural indicators and guidance on cultural monitoring. This requirement models the Hawke's Bay Flood Protection Works OIC and has been so informed through the Treaty Impact Analysis.
40. This option does pose a risk that adverse environmental effects may be caused by an activity from a streamlined consenting process. However, the scope of an OIC is constrained by the requirements set out in s8(1) of the SWERLA and any adverse effects on the environment are to be appropriately mitigated, avoided, or remedied by conditions placed on the consents. A set of standard conditions will be available to the decision maker in an appendix to the OIC, with matters of control also set out in case of the need to impose additional conditions or amend the standard conditions once the specific consent activities have been described in the lodgement details.

#### **Development of this option after consultation**

41. In July 2024, Cabinet agreed for officials to undertake public consultation from 30 July until 23 August 2024. Consultation is a requirement under SWERLA before the Minister can recommend an OIC be made.
42. Feedback was sought from key stakeholders including council, iwi, hapū and Māori, network utility operators, the public, and other government agencies.
43. During this period, the MfE held two online hui (one online public webinar, and one hui with Crown agencies) and presented to the Auckland Council Transport and Infrastructure Committee. MfE also presented to the in-person hui with Auckland Council's Mana Whenua Engagement Forum. A total of 11 written submissions were received including one petition in support of the OIC proposal with 200 signatures.
44. There was strong support for the key policy proposals to:
  - a. Accelerate flood resilience projects in the Māngere community, and
  - b. Seek local input to the OIC.
45. Other points raised in the feedback included the need for council to work with network utility asset owners such as Vector to ensure early agreement on the project works.
46. Kāinga Ora provided written feedback in support of the proposal noting that the works will significantly benefit properties in the Te Ararata catchment, including those in Kāinga Ora ownership. Kāinga Ora requested that, given their extensive

landholdings within the catchments and early stage re-development planning of those landholdings, they would like to be notified as a relevant party when the consents are lodged and be able to provide comments during the consenting process, seeking to identify opportunities to align and optimise with their future build programmes.

47. Te Ākitai o Waiohua Waka Taua Incorporated (the Society) was the only iwi to provide written feedback to which they raised points around seeking the inclusion of Cultural Values Assessments (CVA), Cultural Impact Assessments and associated recommendations raised by iwi with the list of technical documents used in the proposed OIC. They also addressed, from a kaitiakitanga perspective, their concerns with the removal of indigenous vegetation in both flood works catchments and opposed the development of a large pipe bridge as part of the Harania flood resilience works for infrastructure purposes. The Society requested to have ongoing engagement in the flood resilience works projects as part of the OIC.
48. The Review Panel considered the draft OIC on 10 September 2024. In summary, the Review Panel concluded the OIC as 'necessary or desirable' and 'no broader than reasonably necessary' in terms of SWERLA. The Review Panel recommended the draft OIC itself could be improved by the inclusion an express reference to the controlling purpose of SWERLA in the description of the flood resilience works.
49. Officials have reviewed Treaty Settlements for PSGEs and iwi in the Auckland regions and potential impacts on settlement agreements were identified:
  - a. three iwi have been identified as being directly affected by the project works with interests in the coastal and marine area (CMA).
  - b. Ngāi Tai ki Tāmaki and Ngāti Tamaoho both have CMA statutory acknowledgements within the project work areas.
  - c. Ngāti Tamaoho have a standard process for being involved in Auckland council RMA consent processes where any proposed flood protection works activities requiring resource consent extend into or may potentially affect the CMA.
  - d. Te Ākitai o Waiohua Deed of Settlement proposes to include a similar CMA acknowledgement in their upcoming settlement legislation.
  - e. Te Ākitai o Waiohua Waka Taua Incorporated (the Society) provided written feedback during the consultation period requesting the inclusion of Cultural Values Assessments (CVA), Cultural Impact Assessments and associated recommendations raised by iwi with the list of technical documents used in the proposed OIC. Additionally, the Society expects to have ongoing engagement in the flood resilience works projects as part of the OIC. MfE officials reviewed the request and consider that the OIC proposal already provides for these matters.

*Option 3 – Alternative RMA consenting pathways (Global consents for both the Harania and Te Ararata catchment works, Direct Referrals and Notice of Requirements)*

50. This option proposes seeking a resource consent via alternative pathways already provided for in the RMA to undertake the project works. The pathways covered in this include:
  - a. a single global consent for all the works proposed about the Harania and Te Ararata catchments. This consent would cover all the proposed works and be a bundled comprehensive consent and likely to be a non-complying activity.
  - b. consents sought through direct referral to the Environment Court



c. notices of requirement for new designations

51. The main advantage this option provides over Option One is in their potential to provide efficiency of process. For example, a global consent bundles the consents into one and provides the council flexibility to use different design techniques in various places within the catchments, e.g. mangrove clearance, without having to stipulate at the time of application, where these techniques might be used.
52. The alternative consenting pathways under the RMA in this option are all necessarily difficult and technical, often requiring considerable co-ordination with iwi, hapū, local community representatives, technical experts which adds significant time and resource constraints to the project and has a high evidentiary requirement to be met (including technical reporting and engagement).
53. The time taken to consent this option may be longer than the status quo option and provides no certainty that the consents will be granted and in time for works to begin in summer 2024/2025, but this option does provide more certainty that design outcomes can be achieved through flexibility.
54. We estimate that a single global consent to take approximately 12 months for consenting, including notification, hearings and decisions. It would then be subject to an appeal process which could take up to 2 years.
55. The direct referral pathways would likely involve a fully public notified process of the consents which adds to the time and costs of the project works. As with Options 1 and 4, there remains a high risk of the project works not beginning in time for summer 2024/2025 (compared to the OIC) including obtaining the relevant consents and completing the project works.
56. Designations are considered not a viable option as they are not available for regional matters or the Coastal Marine Area (CMA) and as a result, this option will not supplant the need to obtain regional resource consents and any relevant consents under the NESs.
57. Overall, this option may provide some savings in the efficiency of following a single processing timeframe (i.e. global consent). However, there is still the uncertainty that this option would provide the certainty that the project works would be consented and the expected timeframe is that the works would start summer 2025/2026.

*Option 4 – Fast-track consenting pathway (Retained from Natural and Built Environment Act 2023 under the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023) or use the new Fast-track Bill approvals*

58. The Government has retained the fast-track consenting pathway from the now repealed Natural and Built Environment Act 2023 (NBA). This is an interim measure until a new, standalone fast-track consenting legislation comes into effect. The projects works are eligible activities<sup>2</sup> and may be consented under this pathway. The expected timeframes for this pathway is approximately 12 months.
59. As with the standard consenting pathway, there remains a high risk the planned delivery timeframes for the project works becoming earth moving season 2025/2026.

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<sup>2</sup> Schedule 10, clause 14(k) of the NBA: *flood control and protection, including drainage*

60. From an efficiency and expediency perspective, this option (similar to the status quo option) of seeking a resource consent through the Fast-track consenting pathway is an uncertain process as there is no certainty that consent will be granted.
61. In addition, the Fast-track Bill proposes to establish a permanent Fast-track approvals regime for a range of infrastructure, housing and development projects. The Bill has been introduced to the House and public submissions closed on 19 April 2024.
62. The Fast-track Approvals Bill is yet to be enacted and could be towards the end of 2024. This means that the process is unlikely to provide for the project works to begin in time for summer 2024/2025.

*Option 5 – Plan change pathways to amend the Auckland Unitary Plan (Schedule 1 or Streamlined Planning Process)*

63. A Schedule 1 plan change process directly addresses the activity classification and matters of consideration for the project works in the unitary plan. Under this pathway, the Auckland Unitary Plan would be amended to include a permitted or controlled activity status for the project works activities. The plan changes could not introduce rules that are less onerous than national environmental standards (unless otherwise stated) and this option is also required to comply with relevant NESs.
64. The Streamlined Planning Process (SPP) is a faster process than the standard Schedule 1 plan change process with a tailored process proportional to the nature of the planning issue and limited appeals.
65. Both options are two-step processes with a decision for the plan change required before obtaining the resource consents.
66. The timeframes for a standard plan change process of this nature is estimated to require at least two years to reach a decision by the relevant local authority. This does not take into account any appeals lodged against the decision.
67. The timeframes for the SPP would be prescribed in the Minister's direction for the plan change.
68. Consequently, a plan change process and obtaining the relevant resource consents is likely to take approximately three years and the expected timeframe for the start of the works would be in 2026/2027.

## How do the options compare to the status quo?

Table 2: Comparison of options under the RMA to provide for Auckland Council flood recovery works

	<b>Option 1 – RMA standard resource consenting pathway (status quo)</b>	<b>Option 2 – Auckland Flood Recovery Works OIC <i>Preferred option</i></b>	<b>Option 3 – Alternative RMA consenting pathways (Global consents, Direct Referrals and Notice of Requirements)</b>	<b>Option 4 – Fast-track consenting pathway (Retained from Natural and Built Environment Act 2023 or use the new Fast-track Bill approvals)</b>	<b>Option 5 – Plan change pathways to amend the Auckland Unitary Plan (Schedule 1 or Streamlined Planning Process)</b>
<b>Expediency</b>	<p>0</p> <p>Seeking a resource consent is an uncertain process there is no assurance of outcome for the applicant. The estimated timeframe is 12+ months</p>	<p>++</p> <p>Will support recovery and reduce risk in the swiftest manner possible. With enactment in October 2024 this enables works to begin summer 2024/25.</p> <p>The estimate timeframe is 5-7 months (almost half the timeframe as the status quo option)</p>	<p>0</p> <p>This process is time consuming and is a complex process. Given the complex process this option is expected to take longer than the status quo option.</p> <p>The estimated timeframe for either a global consent, direct referral or notice of requirement is 12+ months. Possible appeals through global consent pathway could take up 2 years.</p> <p>Notice of option is similar to the status quo option in that a regional resource consent and any relevant consent under the NESs would still be required.</p> <p>The direct referral option is likely to be shorter than a standard RMA plan change and consenting process. However, it is not viable</p>	<p>+</p> <p>The new Fast-track Bill approvals option is similar to the status quo option in that it is seeking a resource consent however it is through the Fast-track consenting pathway. The risk remains high for significant delays in obtaining consents and undertaking and completing the project works.</p> <p>There is also no certainty of when the Bill will be enacted.</p> <p>Possible timeframes post-enactment for the new Fast-track Bill is 8-12+ months.</p> <p>The estimated timeframe for the Fast-track Consenting pathway retained from the NBA is 12+ months.</p>	<p>--</p> <p>Both Schedule 1 plan change SPP adds significant time from the status quo through requiring a lengthy timeframe for preparation (3-9 months preparation) and processing (1-2 years average) of the proposed plan change time.</p> <p>SPP removes approximately 6 months off the Schedule 1 plan change timeframes.</p> <p>Overall a plan change and the processing and implementation of the plan change process is estimated to be 3 years.</p>

	<b>Option 1 – RMA standard resource consenting pathway (status quo)</b>	<b>Option 2 – Auckland Flood Recovery Works OIC Preferred option</b>	<b>Option 3 – Alternative RMA consenting pathways (Global consents, Direct Referrals and Notice of Requirements)</b>	<b>Option 4 – Fast-track consenting pathway (Retained from Natural and Built Environment Act 2023 or use the new Fast-track Bill approvals)</b>	<b>Option 5 – Plan change pathways to amend the Auckland Unitary Plan (Schedule 1 or Streamlined Planning Process)</b>
			as an alternative consenting pathway as there is no certainty that works could start in time for next earth working season.		
<b>Effectiveness</b>	0 Resource consents for project works likely to be progressed as non-complying likely to be progressed as non-complying or discretionary activities.	++ Will remove regulatory red tape to facilitate recovery.	0 The alternative consenting options all provide a streamlined process to consenting over the status quo process.  These options, however, are also highly resource intensive process with high evidentiary requirement to meet including technical reporting and engagement more so than the status quo resource consent process.  While Notices of Requirement authorise district level consents with no need for a resource consent, there would still be a requirement to obtain regional consents. As a	+ The Fast-track consenting pathway options is similar to the OIC pathway option by seeking a resource consent through a streamlined consenting process.  There are unknown risks of the Fast-track consenting option as this law may be disapplied sometime soon resulting in uncertainty for what replaces it and whether its consents are enduring.  There is still some uncertainty with no assurance of outcome and for the new Fast-track Bill it is not certain at this stage what the final outcome will be of this piece of legislation	-- Both the Schedule 1 plan change process and SPP options require a two-step process as would require the council to first undertake the plan change and then go through the resource consent process under the newly operational plan change.  These options also add to workload of council resources, who are already strained.

	<b>Option 1 – RMA standard resource consenting pathway (status quo)</b>	<b>Option 2 – Auckland Flood Recovery Works OIC <i>Preferred option</i></b>	<b>Option 3 – Alternative RMA consenting pathways (Global consents, Direct Referrals and Notice of Requirements)</b>	<b>Option 4 – Fast-track consenting pathway (Retained from Natural and Built Environment Act 2023 or use the new Fast-track Bill approvals)</b>	<b>Option 5 – Plan change pathways to amend the Auckland Unitary Plan (Schedule 1 or Streamlined Planning Process)</b>
			result, this option only streamlines some of the relevant consents and other consents would still need to go through the status quo process.	and there has higher level of uncertainty than the status quo.	
<b>Cost</b>	<p><b>0</b></p> <p>Costs for preparing and processing approximately 20-30 resource consents under the status quo are estimated between \$6,000 and \$110,000 per consent for the preparation and processing, depending on the type of consents and whether it is notified (limited or full) or not.</p>	<p><b>+</b></p> <p>Expected to reduce the potential costs of preparing and processing of resource consents as well as the reducing the costs for hearings which could add to the costs significantly.</p>	<p><b>-</b></p> <p>Comparative to the status quo, the options of alternative consenting pathways often require more complex consents which requires significant staff and commissioner costs as well as increased costs of applicant technical expertise</p> <p>For notice of requirements, while the costs may be reduced with no need for resource consents at the district level matters, the costs will still be required for obtaining regional consents, The consents would likely be publicly notified which would add time and costs to</p>	<p><b>0</b></p> <p>Reduces some costs comparative to the status quo as the consenting process is streamlined. However, adds costs for applications with technical experts and commissioner time.</p>	<p><b>--</b></p> <p>The plan changes options add costs through the two-step process in comparison to the status quo.</p> <p>There are additional resource costs associated with plan changes (the need for additional council staff time, commissioner costs as well as technical expertise),</p> <p>Potential hearings and appeals costs.</p>

	<b>Option 1 – RMA standard resource consenting pathway (status quo)</b>	<b>Option 2 – Auckland Flood Recovery Works OIC <i>Preferred option</i></b>	<b>Option 3 – Alternative RMA consenting pathways (Global consents, Direct Referrals and Notice of Requirements)</b>	<b>Option 4 – Fast-track consenting pathway (Retained from Natural and Built Environment Act 2023 or use the new Fast-track Bill approvals)</b>	<b>Option 5 – Plan change pathways to amend the Auckland Unitary Plan (Schedule 1 or Streamlined Planning Process)</b>
			the delivery of the works.		
<b>Uphold Treaty obligations</b>	0 Meets expectations/obligations	0 Meets expectations/obligations.  OIC proposal will include mechanisms for ensuring the ability for iwi/hapū/Māori to fulfil their kaitiaki role.	0 Meets expectations/obligations	0 Meets expectations/obligations	0 Meets expectations/obligations
<b>Manage Risks</b>	0  Will manage environmental risks through standard RMA processes.	-  May increase environmental risks caused by the activity of the project works which is increased over the status quo. The scope of an OIC is constrained by the requirement set out in s8(1)(e)(ii) of SWERLA to ensure that where the OIC relates to the RMA that any adverse effects are avoided, remedied or mitigated.	0  Similar to the status quo, the alternative consenting options will manage environmental risks. However, in comparison with the status quo, there is an increased risk of damage/loss of life in future severe weather events due to delayed timeframes to recovery and low resilience.	-  Similar to the status quo, the Fast-track consenting pathway options will manage environmental risks.  In addition, the new Fast-track Bill is not yet enacted and is not certain at this point in the process what the final outcome will be of this piece of legislation once it is enacted.	-  Similar to the status quo, the plan change options will manage environmental risks. In comparison with the status quo, there is an increased risk of damage/loss of life in future severe weather events due to delayed timeframes to recovery and low resilience.
<b>Overall assessment</b>	0	++	0	+	--

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

69. Option 2 – Auckland Council Flood Recovery Works Order in Council is the preferred option as it will meet the policy objectives and deliver the highest net benefits. This option is the Ministry’s preferred option. It presents notable advantages over the status quo and other proposed options. Specifically, option 2 provides the most efficient and expedient option whilst keeping costs minimal for both the council (as Applicant and consent authority) and stakeholders and for upholding Treaty obligations.

70. Option 2 allows for the relevant resource consents to be obtained as swiftly as possible and enable the flood works to begin as soon as possible and provide affected homeowners certainty and remove the intolerable risk to life.

### What are the marginal costs and benefits of the option?

71. In this analysis we have considered the cost of the preferred option (the OIC pathway) as compared with taking no action (and have the council follow the standard RMA consenting pathway).

72. An explanation of low, medium and high impact is given below:

- a. Low impact: the difference between the impact from the OIC pathway and the RMA pathway are expected to be nil or negligible.
- b. Medium impact: there is an expected difference between the impact from the OIC pathway and the RMA pathway, but this difference is expected to be not substantial.
- c. High impact: the difference between the impact from the OIC pathway and the RMA pathway are expected to be substantial (higher or lower).

73. In the table below, impacts are described as one-off or ongoing. One-off will normally not last beyond a specific stage in the recovery works. Ongoing impacts are longer, may extend over several years, and may generate a variety of other impacts that are not anticipated here.

**Table 2: Cost benefit analysis of the preferred option (OIC pathway)**

Affected groups <i>(identify)</i>	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
Māngere community/residents	Under the OIC, there is no capacity for residents, including iwi/hapū/Māori to object to the consents.  Residents are unable to scrutinise the project works through the OIC pathway in the same way that they would through the status quo/standard RMA consenting pathway.	Medium impact – ongoing cost	High/medium.



	<p>As the ability to object could subject consents to a more complete and wider analysis, removing that ability may have longer-term negative impacts such as further delay to the project works and larger costs for future flooding events. Limiting the community's participation in the democratic process may affect the community's longer-term buy in and connection to the project works.</p> <p>A stakeholder advisory group is to be appointed with representatives from Māori entities, neighbouring owners and occupiers, relevant stakeholders and agencies to be invited to provide their feedback on the proposed works.</p> <p>Through the consultation undertaken on the OIC proposal, there was a petition in support of the OIC proposal with 200 signatures from local residents and individuals with some stating: "<i>The severe weather events have greatly impacted our area, and these projects are essential for protecting our homes and improving our community's safety.</i>"</p> <p><i>High evidence certainty for the removal of costs of objection.</i></p> <p><i>High evidence certainty for community support for the proposed OIC through public submissions and petition.</i></p> <p><i>Medium evidence certainty for the longer-term impacts for the removal of right to object.</i></p>		
Auckland Council	<p>The costs of council's regulatory activities in relation to the OIC are expected to be lower than if the standard RMA consenting pathway were used. The OIC replaces the RMA public notification, submission and hearing step with a simplified process inviting specified persons to provide comment without a requirement to convene a hearing. The OIC also removes RMA appeal rights which otherwise are a significant cost with major infrastructure projects.</p> <p>Auckland Council's Governing Body agreed to enter a co-funding arrangement of \$1.984 billion with central government as part of the National Resilience Plan in October 2023. Of this, \$774 million is allocated for the Voluntary Buy-out Support Scheme and \$820 million is allocated to risk mitigation projects. Auckland</p>	High impact – decrease in the council's regulatory costs through the OIC pathway compared to the regular EMA consenting pathway.	High

	<p>Council is sharing the cost of flood resilience projects with central government, subject to business case approvals.</p> <p>The estimated total cost of the project works is \$53.84 million.</p> <p><i>High evidence certainty as the council portion of this funding has been approved as part of the overall Making Space for Water budgets through the Long-Term Plan 2024-2034.</i></p> <p><i>High evidence certainty, as the OIC gives a specific role to council as regulators.</i></p>		
<p>Iwi/hapū/Māori and PSGEs</p>	<p>Three iwi have been identified as being directly affected by the project works with interest in the coastal and marine area (CMA). Ngāi Tai ki Tāmaki and Ngāti Tamaoho both have CMA statutory acknowledgements within the project work areas.</p> <p>Ngāti Tamaoho have a standard process for being involved in Auckland council RMA consent processes where any proposed flood protection works activities requiring resource consent extend into or may potentially affect the CMA.</p> <p>Te Ākitai o Waiohua Deed of Settlement proposes to include a similar CMA acknowledgement in their upcoming settlement legislation.</p> <p>The OIC proposal removes iwi/hapū/Māori right to object or lodge RMA appeals on the project works consents comparative to what would usually be available through the standard RMA consenting process.</p> <p>However, to mitigate this the proposed OIC includes steps to ensure engagement occurs (consent authority to invite Māori entities to provide written comments on the application). Requirements of the application documents in the proposed OIC include a description of cultural values in the works area that have been identified by a relevant Māori entity, and an assessment of all potential effects of the works.</p> <p>In addition, the proposed OIC includes a requirement for the appointment of Māori entity representatives for the duration of the construction works. The appointed representatives provide cultural indicators and guidance on cultural monitoring. The conditions of consent in the proposed OIC also require the consent holder to take into account any cultural indicators, when</p>	<p>Low impact comparative to the standard RMA consenting process – mitigated by the requirements built into the OIC proposal to provide for iwi/hapū/Māori and PSGE participation.</p>	<p>High</p>

	<p>preparing any environmental management plans for construction as required under the OIC conditions.</p> <p><i>High evidence certainty through the Treaty Impact Analysis undertaken of relevant resource management settlement redress relevant to the proposed project works.</i></p>		
Central Government	<p>Under the OIC, there is no specific role for central government and there is no ability for Central Government to object to the consents. Therefore, there are no costs to the Environmental Protection Authority or the Environment Court (as might be the case for the standard RMA consenting pathway).</p> <p>For both the OIC and standard RMA pathways, the project works may require permits and authorisations under non-RMA legislation that is administered by the Department of Conservation (DOC) and Heritage New Zealand Pouhere Taonga.</p> <p>The flood protection works the OIC pathway would enable will be co-funded by the Crown and Auckland Council, as indicated in the cost-sharing arrangements that were negotiated as a part of the Future of Severely Affected Locations programme. There is a Crown Funding Agreement in place that covers these risk mitigation works, along with other recovery projects.</p> <p><i>High evidence certainty through the Future of Severely Affected Locations programme and co-funding arrangements between the Crown and Auckland Council.</i></p>	Low impact – one off cost	High
Local community groups/NGOs	<p>Under the OIC, there is no capacity for local community groups or NGOs to object to the consents. They are unable to scrutinise the project works through the OIC pathway in the same way that they would through the status quo/standard RMA consenting pathway.</p> <p>As the ability to object could subject consents to a more complete and wider analysis, removing that ability may have longer-term negative impacts such as further delay to the project works and larger costs for future flooding events. Limiting the community's participation in the democratic process may affect the community's longer-term buy in and connection to the project works.</p> <p>This is being mitigated by the controlled activity status whereby a set of standard conditions will be available to the decision maker</p>	Low impact comparative to the standard RMA consenting process – mitigated by the requirements built into the OIC proposal to provide for public participation	High

	<p>in an appendix to the OIC, with Matters of Control also set out in case of the need to impose additional conditions or amend the standard conditions once the specific consent activities have been described in the lodgement details.</p> <p>For example, a stakeholder advisory group is to be appointed, neighbouring owners and occupiers, relevant stakeholders and agencies to be invited to provide their feedback on the proposed works.</p>		
<b>Total monetised costs</b>			
<b>Non-monetised costs</b>		<i>Medium</i>	
<b>Additional benefits of the preferred option compared to taking no action</b>			
Māngere community/residents	<p>Under the OIC, owners and occupiers of affected properties will have faster certainty that their properties can be protected from flooding and in some case their Category level can be reduced.</p> <p>Following public consultation on the OIC pathway proposal, it was evident that this option was favourable and preferable. There was strong community support for the key policy proposals to accelerate the flood resilience projects in the Māngere community and seek local input to the OIC pathway.</p> <p><i>High evidence certainty as the project works to improve the flood control and mitigation infrastructure have been identified as a key action in <a href="#">Te Mahere Whakaroa mō Tāmaki Makaurau (the Tāmaki Makaurau Recovery Plan)</a> and supported by the Making Space for Water programme of works. The works are funded in the Long-Term Plan.</i></p> <p><i>High evidence certainty through 11 pieces of written feedback received during public consultation period, including one petition in support of the OIC pathway with 200 signatures.</i></p>	High impact – benefit of approximately 56 affected properties with intolerable risk to life reduced to 5 properties following the project works	High
Auckland Council	<p>Under the OIC, the applicant is the Auckland Council with the council also acting as the consenting authority (final decisions delegated to hearings commissioner). This is unchanged from the standard RMA consenting pathway where councils frequently</p>	High impact – benefit of the less resourcing pressures to both prepare and process the consents and potential hearings costs removed.	High

	<p>apply for a resource consent for major projects in their district or region.</p> <p>The OIC pathway is expected to reduce the potential costs of preparing and processing of resource consents as well as the reducing the costs for hearings</p> <p><i>High evidence certainty as this process is similar to that set out in previous OICs and councils are familiar with the process.</i></p> <p><i>Councils are also prepared to implement the OIC as soon as it is in place.</i></p>		
Local community groups/NGOs	<p>The flood resilience works through the 'Making Space for Water Programme' supports the resilience of the land to address the intolerable risk to life and property through community-level interventions. This is to be undertaken with expediency and as such faster than the standard RMA consenting pathway.</p> <p><i>Medium evidence certainty through documentation provided by Auckland Council seeking the OIC.</i></p>	High benefit – flood resilience works will be able to be undertaken sooner and reducing risk exposure for surrounding catchment.	Medium
Kāinga Ora	<p>Kāinga Ora developments and extensive landholdings are located within the Te Ararata catchment. As such they are considered landowners in and adjacent the project works and are provided the opportunity to provide comment during the consenting process and seek opportunities to align and optimise with their future build programmes.</p> <p><i>High evidence certainty as this was raised in Kāinga Ora's feedback during the public consultation period.</i></p>	High benefit – flood resilience works will be able to be undertaken sooner and reducing risk for properties	High
<b>Total monetised benefits</b>			
<b>Non-monetised benefits</b>		<i>High</i>	

## Section 3: Delivering an option

### How will the new arrangements be implemented?

74. The OIC is still in draft form and is yet to go through the second cabinet scrutiny process. It is anticipated it will be enacted in late October.
75. MfE's intention is to enact the preferred option of an OIC at the end of October 2024 to enable the council to lodge their consents by early November, to allow for consent decisions before the end of the RMA calendar year on 20 December 2024. This will allow for work to begin in summer 2024/2025.
76. The OIC option would not have retrospective effect.
77. The OIC option proposes to limit the duration of consents to a maximum of 5 years. Where those consent would otherwise be granted for up to 35 years, this is beyond the expiry of the SWERLA on 31 March 2028.
78. The proposed OIC would restrict the lapse date for the consents to 2 years. This requires Auckland Council as consent holder to start works within 2 years of receiving consent to ensure that the consent does not lapse.
79. Any adverse effects caused by the project works will be sought to be avoided, remedied or mitigated by way of conditions of consent.
80. There will be communications strategies and engagement plans coordinated between MfE and Auckland Council to ensure the messaging for the Auckland communities is consistent, informative and accurate.

### How will the new arrangements be monitored, evaluated, and reviewed?

#### Monitoring and evaluation

81. Monitoring of the activities will occur when required by the relevant council compliance staff.

#### Review of the Order in Council

82. It is proposed that the OIC be reviewed one year after enactment. This review will be undertaken by MfE as part of MfE's regular and ongoing reviews (which started in early 2024) of OICs that are made under the SWERLA, and for which the Minister for the Environment is the responsible Minister.
83. Section 12 of the SWERLA requires the relevant Minister to keep OICs under review and decide whether they continue to be satisfied in relation to the following matters (SWERLA section 8(1)(a)):
  - a. The order is necessary or desirable for one or more purposes of the SWERLA
  - b. the extent of the order is not broader (including geographically broader in application) than is reasonably necessary to address the matters that gave rise to the order.

- c. the order does not breach section 11<sup>3</sup> of the SWERLA
- d. the order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990.

84. The main steps of a review by the responsible agency are:

- a. Approximately two months before a review begins, MfE informs stakeholders and Treaty partners about the information it is seeking, the relevant dates for the period to which the information refers, and opportunities for engagement.
- b. MfE engages with internal and external stakeholders, and Treaty partners, to receive feedback on the use of the OICs and the impacts they are having.
- c. MfE analyses the feedback and data received from stakeholders and Treaty partners. The draft options and recommendations for the Minister are reviewed by the Legal team and a Treaty impact analysis is completed before they are finalised.
- d. MfE advises the Minister on whether the OIC remains necessary or desirable, and whether changes are needed to ensure it remains fit for purpose. If the Minister agrees to changes, MfE will work with relevant parties on the amendments.
- e. Key information relating to reviews is published on the MfE website. MfE liaises with other government agencies, as appropriate, on the outcomes of reviews.

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<sup>3</sup> Section 11 restricts the OIC from granting or modifying a requirement to release someone from custody or to have their detention reviewed, or from granting or modifying an exemption or restriction imposed by (for example) the New Zealand Bill of Rights Act 1990.



Appendix 1: Summary of potential adverse environmental effects of the flood resilience project works and proposed management measures

Potential Effects	Proposed Management Measures
Mana whenua / cultural values	Continue to use the existing Auckland Council Infrastructure and Environmental Services hui and engage with interested iwi.
Effects on stakeholders, community and directly affected people	Develop and implement a Stakeholder and Communications Management Plan (SCMP) including actions to engage with: <ul style="list-style-type: none"> <li>• Iwi</li> <li>• Māngere-Ōtāhuhu Local Board</li> <li>• Network utility operators including (but not limited to) Auckland Transport, Watercare and Vector.</li> <li>• The local community, particularly those in close proximity to the works. This could include liaison groups.</li> </ul>
Construction disruption and associated effects	Development and implementation of a Construction Environmental Management Plan (CEMP), which sets out clear roles and responsibilities, the construction methodology and programme of work, and the overarching principles and practices to be implemented. The CEMP would guide the other specific construction related environmental management plans set out in this table.
Construction noise and vibration effects	Development and implementation of a Construction Noise and Vibration Management Plan (CNVMP) which will be incorporated into a project Construction Environmental management Plan (CEMP).
Construction traffic effects	Development and implementation of a Construction Traffic Management Plan (CTMP), which will be incorporated into a project CEMP.
Construction related erosion and sedimentation effects, including dust.	Development and adoption of earthworks design principles. Development and implementation of an Erosion and Sediment Control Plan (ESCP) in accordance with Auckland Council Guideline Document GD2016/005 (GD05) which will be incorporated into a project CEMP. This will include specific measures for erosion and sediment effects, dust, and requirements for specific streamworks and coastal works methodologies.
Arboricultural effects, including the removal of trees and works in proximity to trees.	Development and adoption of mitigation and design principles. Development and implementation of Tree Protection Methodology (TPM) which will be incorporated into a project CEMP. This is likely to include measures such as supervision of works by a project arborist.

Potential Effects	Proposed Management Measures
Ecological effects, including both temporary and permanent effects on fauna, flora, watercourses and the CMA.	Development and adoption of ecological design and management principles. Development and implementation of an Ecological Management Plan (EMP), which will be incorporated into a project CEMP. The EMP will detail management measures including (but not limited to) pre-works survey, supervision requirements, stream diversions etc.
Natural Hazards including flooding, coastal inundation, instability.	Development and adoption of earthworks and design principles.
Contaminated land – potential discharges from disturbance of contaminated land.	Management measures in place during construction as part of a Contaminated Soils Management Plan (CSMP), which will be incorporated into a project CEMP.
Effects on known or unknown archaeological sites	Accidental discovery protocols (unless authority obtained, see section 6). Supervision by project archaeologist near known archaeological sites.
Landscape and natural character effects, from the removal of vegetation and construction of new structures	Development and adoption of landscaping and planting design principles, including maintenance following works completion. Landscaping / planting plans, which will be incorporated into a project CEMP.
Groundwater dewatering and settlement effects (where dewatering is required)	Development and adoption of earthworks and design principles. Where necessary, Groundwater Settlement Monitoring and Contingency Plan (GSMCP), which will be incorporated into a project CEMP.
Effects on coastal and / or hydrological processes from changes to stream and coastal environments including new structures, reclamation, recontouring and mangrove removal.	Development and adoption of design principles. Incorporation of specific construction methodology for works in the CMA and streams into the CEMP.
Effects on the operation of existing network utilities	Development and implementation of SCMP as detailed above. Development of works methodology with network utility operators so impacts to utilities are managed.