



## PROACTIVE RELEASE COVERSHEET

<b>Minister</b>	Hon Penny Simmonds	<b>Portfolio</b>	Environment
<b>Name of package</b>	Proactive Release – Severe Weather Emergency Recovery Legislation (Hawke’s Bay Flood Protection Works) Order 2024	<b>Date to be published</b>	10/07/2024

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
15 February 2024	Cabinet paper (CAB-387): Proposed Order in Council under the Severe Weather Emergency Recovery Legislation Act 2023 – Hawke’s Bay flood works and associated infrastructure	Ministry for the Environment
16 May 2024	Cabinet paper (CAB-433): Severe Weather Emergency Recovery (Hawke’s Bay Flood Protection Works) Order 2024	Ministry for the Environment
15 February 2024	CAB-387 Appendix 1 Draft engagement plan	Ministry for the Environment
16 May 2024	CAB-433 Appendix 2 Supplementary Analysis Report – Hawkes Bay Flood Protection Works OIC	Ministry for the Environment
16 May 2024	CAB-433 Appendix 3 Overview of feedback from public engagement	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-387 Proposed Order in Council under the Severe Weather Emergency Recovery Legislation Act 2023 – Hawke’s Bay flood works and associated infrastructure* and *CAB-433 Severe Weather Emergency Recovery (Hawke’s Bay Flood Protection 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-433 Appendix 2 Supplementary Analysis Report – Hawkes Bay Flood Protection Works OIC* and *CAB-433 Appendix 3 Overview of feedback from public engagement* under Section 9(2)(a) of the Official Information Act to protect the privacy of natural persons.

**In-Confidence**

Office of the Minister for the Environment

Chair, Cabinet 100-Day Plan Committee

**Proposed Order in Council under the Severe Weather Emergency Recovery Legislation Act 2023 – Hawke’s Bay flood works and associated infrastructure**

**Proposal**

1. Cyclone Gabrielle created significant loss and damage to the Hawke’s Bay region. The flooding resulted in significant areas of land that are no longer safe to inhabit. To support affected landowners a locally led, central government supported approach is needed.
2. This paper seeks Cabinet’s agreement to:
  - 2.1 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 proposal in this paper reflects the priorities outlined in the Government’s 100-Day Plan to support the recovery following the severe weather events of early 2023 to:
  - 3.1 Meet with councils and communities to establish regional requirements for recovery from Cyclone Gabrielle and other recent major flooding events.
  - 3.2 Make any additional OIC needed to remove red tape to speed up cyclone and flood recovery efforts.
4. In particular, the proposal described in this paper is informed by discussions had in relation to paragraph 3.1 and will deliver on the commitment set out in paragraph 3.2.
5. This proposed OIC seeks to ensure people and communities in the Hawke’s Bay region can recover from the effects of Cyclone Gabrielle and are protected against future events through the construction of flood works and associated infrastructure (‘the project works’).

**Executive Summary**

6. In February 2023, Cyclone Gabrielle created significant loss and damage to the Hawke’s Bay region. The flooding resulted in significant areas of land that is no longer safe to inhabit.

7. The Hawke's Bay Regional Recovery Agency (HBRRRA) has identified eight locations across the Hawke's Bay region requiring safety enhancements and improvements to the resilience of the Hawke's Bay flood protection infrastructure (refer location map in Appendix 2). The project works include the construction of stop-banks, culverts, retaining walls, bridge works, stream realignments, and earthworks. In seven locations the project works will enable approximately 975 properties sitting in Category 2A<sup>1</sup> or Category 2C to be recategorised as Category 1 and will support the economic and social recovery of the Hawke's Bay region. The eighth project location is Awatoto, south of Napier City. The project works at Awatoto will protect the city's wastewater treatment plant and nearby industrial area from flooding..
8. The SWERLA enables certain legislation to be amended temporarily via the OIC mechanism to exempt, modify, or extend statutory obligations where necessary to support recovery in the areas affected by the severe weather events.
9. The project works will require resource consents under the RMA. These consents will be complex and require a streamlined process to ensure that the works can be completed and in place in time to enable 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. Four of the sites require resource consents to be in place for construction to start in October 2024<sup>2</sup>. The proposed OIC will classify the project works as a controlled activity, 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.

## Background

10. The SWERLA established a mechanism for legislation to be amended via OIC to enable recovery activities, potentially targeted to specific areas or circumstances. There is a comprehensive set of safeguards provided in the SWERLA to ensure the OIC mechanism is used appropriately.
11. Region-wide flooding issues have significantly affected several residential locations. There are also wider impacts due to the social and economic costs associated with responding to and recovering from a major flood event. This includes impacts on urban, rural, farming, business and commercial areas, and tangata whenua.
12. The HBRRRA<sup>3</sup> has prepared the Hawke's Bay Regional Recovery Plan (the 'recovery plan') which sets out the outcomes, priorities, actions and funding needed for the

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<sup>1</sup> Category 1 is defined as: *Repair to previous state is all that is required to manage future severe weather event risk*

Category 2C is defined as: *Community level interventions are effective in managing future severe weather event risk.*

category 2P is not relevant to this Order. It is defined as: *Property level interventions are needed to manage future severe weather event risk, including in tandem with community level interventions.*

Category 2A is defined as: *Potential to fall within 2C/2P but significant further assessment required.* Nb. Category 3 is defined as: *Future severe weather event risk cannot be sufficiently mitigated. In some cases some current land uses may remain acceptable, while for others there is an intolerable risk of injury or death.*

<sup>2</sup> Whirinaki, Awatoto, Waiohiki, and Ohiti Road (Omahu) start construction in October 2024. Wairoa, Pakowhai, Porangahu and Havelock North start construction in the following season (summer 2025/2026).

<sup>3</sup> The HBRRRA includes representatives from councils, iwi, hapū and six Post-Settlement Governance Entities.

region's recovery. The recovery plan identifies the flood works and mitigation as a key action for the region's recovery and signals the need for an OIC.

13. Officials have heard directly from the Hawke's Bay community and councils that regulatory relief is needed to help speed up the recovery work. Officials are continuing to engage with all councils covered by SWERLA to ascertain whether further OICs or other methods such as the new fast-track consenting regime are necessary.

## **Analysis**

### **Legislative effects of the proposed OIC**

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

### *Changes to the RMA*

15. Under the standard RMA consenting pathway there is a high risk of significant delays in obtaining consents. The project works require resource consents under the regional, district plans and national environmental standards.<sup>4</sup> Under these plans the consent applications would fall into the discretionary or non-complying activity classification under the RMA and are likely to be publicly notified. There is also a risk the consent decisions are appealed to the Environment Court.
16. I propose that the OIC would ensure that where a consent is required, these consents are processed as a controlled<sup>5</sup> activity to provide certainty for the applicants and other parties.
17. The intention of the controlled activity status for consents is to ensure that all environmental effects that would normally be managed via consents are still able to be managed. Where an activity is already a permitted activity, then under the OIC the status remains permitted.
18. The proposed OIC will be limited to consent applications lodged by the local authorities in Hawke's Bay. For seven of the locations this will be the regional council, with the remaining application lodged by Hastings District Council (project works in Havelock North).

### *Timeframes*

19. I propose that the OIC will come into force from the day after Royal Assent and will expire on 31 March 2028. This timeframe is the maximum time for an OIC as the SWERLA expires on 31 March 2028. In addition, this period will allow for the project works to be consented and for construction to begin within the timeframes of the SWERLA.

### **Limited public participation and decision-making processes**

20. The project works are complex consents and are likely to be publicly notified if the standard RMA consenting process is followed.

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<sup>4</sup> National Environmental Standard Freshwater (NESF) and National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS).

<sup>5</sup> The consent must be granted but subject to set conditions set by the consent authority and must comply with other regulations, plans and parts of the RMA 1991.

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21. To speed up the timeframes, public and limited notification will be reduced with consents required to be issued by the consent authority within 30 working days of the lodgement date.
22. I propose the OIC should provide particular people with the opportunity to comment on the consent applications, but this will not provide submission or appeal rights. Judicial review will still be available. This is the same approach followed in the Severe Weather Emergency Recovery (Waste Management) Order 2023, the Severe Weather Emergency Recovery (Land Transport Funding) Order 2023 and the Severe Weather Emergency Recovery (Waka Kotahi New Zealand Transport Agency) Order 2023.
23. I propose an alternative consultation process be drawn from the process in section 9 of the SWERLA for the development of OICs and the consultation process in clause 9 of the Severe Weather Emergency Recovery (Waka Kotahi New Zealand Transport Agency) Order 2023. This process would require the consent authority, within 5 days of a consent application being lodged, to notify local iwi, hapū and Post-Settlement Governance Entities (PSGEs); each local authority in whose district or region the work is to be undertaken; relevant agencies; adjacent landowners; any relevant network utility operators; any requiring authority that holds a designation over the land in the work area; any other persons with appropriate interest, and those with interests in the coastal marine area.
24. 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. I propose the OIC include a schedule setting out the consent conditions the consent authority will impose. This will give the applicant and other interested parties certainty at the outset on conditions. The consent authority in most cases will be the HBRC, acting independently of its other role as asset manager and applicant.

### *Interface with the Fast-Track Consenting Bill*

25. On 23 January 2024 Cabinet agreed [CAB-24-MIN-0008] to develop this new, permanent fast-track consenting regime aimed at enabling infrastructure and other projects that have significant regional and national benefits. Cabinet authorised delegated Ministers to jointly make further detailed decisions on policy for the Fast-track Consenting bill (FTC bill). Officials are preparing further advice on the key design decisions for drafting the legislation (to be provided on 12 February 2024). Officials will also signal policy areas that will need further design following the introduction of the bill, including testing through select committee.
26. Subject to Cabinet decisions, the Minister Responsible for RMA Reform proposes to introduce the FTC bill to the House on 7 March 2024. The bill will then proceed through the House, including a select committee process. Due to timing, the FTC provisions will not be available in time to consent and enable construction for the first tranche of project works to begin in October 2024.
27. When enacted, the fast-track consenting regime could provide an alternative consenting pathway to those provided under existing OICs, including the later project works under the proposed flood works OIC. Under section 12 of the 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 the Act.

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

28. Under section 8(1)(e) of the SWERLA, if an OIC relates to the RMA, I must consider:
- 28.1 the effects on the environment that could occur as a result of the OIC, and
  - 28.2 whether any adverse effect can be avoided, remedied, or mitigated.
29. To manage the environmental effects of activities that normally require consent, I am proposing a controlled activity status for the project works so that adverse effects can be managed through conditions of consent.
30. I propose the OIC should include a list of conditions that will avoid, remedy or mitigate adverse environmental effects as well as ensure that adequate engagement takes place with iwi, hapū and Māori on the project works.

### Treaty of Waitangi considerations

31. The proposed OIC has implications for iwi, hapū and Māori, including PSGEs, as it seeks to remove or alter the ability for Māori to provide input into certain decisions and outcomes under the RMA relating to the Hawke's Bay flood works, including notification and consenting. The project works will, however, also benefit Māori land and interests in the eight project locations by ensuring they are better protected from future flood events.
32. Officials are currently analysing how the proposed OIC will impact on 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.

■ [REDACTED] s9(2)(h)

■ [REDACTED] s9(2)(h)

### Land access arrangements

35. The HBRC will need to acquire interests in land from private landowners for the project works. The HBRC has been engaging with affected local communities, and its intention is to acquire those land interests by agreement.
36. The Public Works Act 1981 (PWA), administered by Toitū Te Whenua Land Information New Zealand (LINZ), sets out the process for the Crown and local authorities to acquire land from private landowners for public works. The PWA has provisions for compulsory acquisition that can be used when efforts to acquire land interests by agreement have not been possible.
37. Modifications to the PWA were considered but are not being proposed in this OIC. The reasons for this are:
- 37.1 If land can be acquired by consent, that is the first and best method.

38. To avoid delays to the OIC, the preferred approach is to progress the OIC without the inclusion of changes to the PWA. In the meantime, LINZ is working with the HBRC to identify the land impacted by the project works and is developing a streamlined process to acquire land interests if agreement cannot be reached.

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

39. The proposal in this paper aims to reduce the significant social and economic costs of response and recovery from the flooding that was caused by the severe weather events. This includes the impacts felt in urban, rural farming, business and commercial areas.
40. The streamlining of the consenting processes for the flood protection and mitigation works and associated infrastructure will ensure that progress on the project works can begin as quickly as possible.

### **Financial Implications**

41. The repair and project works require significant investment, with the Crown contributing \$203 million and the Hawke's Bay local authorities contributing collectively a further \$44 million.
42. The Crown has appointed Crown Infrastructure Partners to administer funding arrangements. These funding arrangements support the delivery of the project works and include putting a work programme in place, programme management, and monitoring requirements.

### **Legislative Implications**

43. This proposal is for a new OIC to be made under the SWERLA.
44. Section 7 of the SWERLA enables OICs to be made for the purposes of the SWERLA and allow exemptions from, modifications of, or extensions to provisions in legislation listed in Schedule 2 of the Act, which includes the RMA.
45. OICs can only be made where the Minister responsible is satisfied they are reasonably necessary or desirable for one or more purposes of the SWERLA. I am satisfied the proposal meets these requirements sufficiently to be progressed to the next stage of development. When I return to Cabinet with the final OIC I will confirm these statutory requirements have been met.
46. The project works may also require multiple permits and authorisations under legislation that is administered by the Department of Conservation (DOC) and Heritage New Zealand Pouhere Taonga (HNZ). DOC and HNZ have been consulted on the proposed OIC. They consider that their existing authorisation processes do not require change and applications will be rapidly processed under current legislative provisions.

s9(2)(h)

s9(2)(h)

s9(2)(h)

## Impact Analysis

### *Regulatory Impact Statement*

49. Cabinet's impact analysis requirements apply to the proposals in this Cabinet paper. For 100-Day Plan proposals which seek approval for new policy, Cabinet has determined that Regulatory Impact Statements (RIS) are required but that they do not need to be quality assured. MfE has notified the Treasury's Regulatory Impact analysis team that they were not able to prepare an accompanying RIS due to time constraints.
50. The Treasury and MfE have agreed that supplementary analysis will be provided when the Order is considered for enactment by Cabinet in May 2024.

### *Climate Implications of Policy Assessment*

51. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as there is no direct impact on emissions.
52. The CIPA team notes that proposed changes to the Resource Management Act 1991 (RMA) will support flood mitigation and associated infrastructure works which may have an indirect emissions impact.
53. The CIPA team will work with officials to assess the potential emissions impact as this work is progressed.

## Population Implications

54. Streamlining the consenting process for flood protection and mitigation works across the eight project locations will provide benefit to residents across the Hawke's Bay region. The repair works and project works will ensure that properties identified as Category 2C will be reclassified as Category 1 and people will be able to safely inhabit their homes once the works are completed.



## Human Rights

55. The proposal in this paper will engage section 27 of the New Zealand Bill of Rights Act 1990 (NZBORA)<sup>6</sup>. In relation to the RMA, I consider the proposal is a justified limit on the rights and freedoms under NZBORA for the following reasons:

55.1 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 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.

55.2 The rights for persons to seek a judicial review are unaffected by the proposed new OIC.

## Use of External Resources

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

## Consultation

57. The SWERLA requires engagement on OIC proposals. The engagement plan provided in Appendix 1 sets out the approach to engagement for this proposal.

58. Officials from MfE have worked closely with the HBRRA, the HBRC, LINZ and the Cyclone Recovery Unit (CRU) in scoping the policy for this proposed OIC.

59. In the process of developing this policy advice, feedback was sought from CRU [REDACTED] s9(2)(h) on the compliance with the legislative requirements for an OIC. The proposal in this paper reflects changes suggested from those discussions.

60. MfE engaged with the Department of Prime Minister and Cabinet (DPMC) (both the Policy Advisory Group (PAG) and the CRU), MCH, Te Puni Kōkiri (TPK), DOC, the office for Māori Crown Relations - Te Arawhiti, LINZ, and the Department of Internal Affairs (DIA) on this draft Cabinet paper. The agencies supported the substance of the proposal and sought minor changes relating to background context, interaction with the FTC bill, and engagement processes.

## Communications

61. Subject to Cabinet approval of the proposal in this paper, officials will undertake statutory engagement on the proposal from 27 February to Monday 18 March 2024, as outlined in Appendix 1.

## Proactive Release

62. I intend to release this Cabinet paper within 30 days of final Cabinet decisions on the proposed OIC, and once the OIC has been enacted.

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<sup>6</sup> Section 27 provides that every person whose rights, obligations and interests protected or recognised by law have been affected by a determination of any tribunal or other public authority has the right to apply, in accordance with law, for judicial review of that determination.

## 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 enable recovery activities potentially targeted to specific areas or circumstances
2. **note** that I propose an OIC to provide streamlined processes under the Resource Management Act 1991 (RMA) to enable safety enhancements and improvements to the resilience of the Hawke's Bay flood protection infrastructure
3. **note** the proposed OIC would streamline RMA consenting processes, and that doing so will support the economic and social recovery of the Hawke's Bay region
4. **agree** to an OIC to amend the RMA and associated regulations and plans through the process under the SWERLA to:
  - a. classify activities, that are not already classed as permitted, as controlled activities (this does not extend to prohibited activities),
  - b. provide a streamlined process for controlled activity resource consents with reduced resource consent application requirements,
  - c. include a list of conditions which will avoid, remedy or mitigate adverse environmental effects,
  - d. include conditions which ensure engagement with iwi, hapū and Māori occurs
5. **note** that no changes will be required to the Conservation Act 1987, the Reserves Act 1977, the Wildlife 1953, the Freshwater Fisheries Regulations 1983, and the Heritage New Zealand Pouhere Taonga Act 2014 as existing authorisation processes can be applied
6. **note** that if the Fast-Track Consenting Bill is enacted it may affect whether existing OICs are still needed. This can be addressed when the OICs come up for review under s12 of the SWERLA
7. **agree** 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)
8. **agree** that the OIC will apply from the day after Royal Assent and through to 31 March 2028 when the SWERLA expires
9. **agree** that the scope of the proposed OIC will be limited to resource consent applications for flood works and associated infrastructure in eight locations in the Hawke's Bay:
  - a. Wairoa
  - b. Whirinaki

**IN CONFIDENCE**

- c. Awatoto
- d. Havelock North
- e. Waiohiki
- f. Ohiti Road (Omahu)
- g. Pakowhai
- h. Porongahau

and prepared and lodged by one or more of the following local authorities:

- a. Hawke's Bay Regional Council
  - b. Central Hawke's Bay District Council
  - c. Hastings District Council
  - d. Napier City Council
  - e. Wairoa District Council
10. **note** the Ministry for the Environment will provide a Supplementary Analysis Report when this OIC is considered for enactment by Cabinet in May 2024
11. **agree** the Minister for the Environment will undertake engagement for the proposed OIC (as outlined in Appendix 1)
12. **authorise** the Minister for the Environment to:
- a. carry out public engagement on the OIC proposal
  - b. further refine or clarify any policy decisions relating to the amendments in this paper, in a manner not inconsistent with this proposal, if required
13. **invite** the Minister for the Environment to issue drafting instructions to the Parliamentary Council Office to give effect to these decisions
14. **note** that I will report back to Cabinet in May 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 Hawke's Bay flood works and associated infrastructure Order in Council**

## **Draft engagement plan for the proposed Hawke's Bay flood works and associated infrastructure Order in Council**

### **1. Purpose**

The Ministry for the Environment - Manatū Mō te Taiao (the Ministry) will be consulting on the proposal to create a new Order in Council (OIC) in the Hawke's Bay to facilitate flood mitigation and associated infrastructure works to manage flooding risk in response to Cyclones Gabrielle and Hale. This plan provides a high-level overview of formal consultation with councils, 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 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 OICs 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 is intended to cover a limited number of locations where specific works are proposed to reduce risk of flooding impacts in future. These locations are widespread across the Hawke's Bay region, with wider public interest and implications. Several proposed locations have community level effects alongside individual properties.

The proposed OIC includes stop banks, spillways, river realignment and other interventions to protect communities and property from future flood damage. Flood works and the intended use of OICs is signalled clearly in the Hawke's Bay Regional Recovery Plan, and Ministry staff have been working with the Hawke's Bay Regional Recovery Agency (HBRRA), the councils, and the Cyclone Recovery Unit (CRU). Councils in Hawkes Bay alongside the HBRRA have undertaken initial engagement on the flood works proposals.

### **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.

## Appendix 1

We understand that in the wake of the Cyclone Gabrielle anniversary there is a need for action, in particular the Hawkes Bay region and those affected. The proposed OIC would provide a pathway for recovery action. The risk of no action for affected communities will be a key driver to highlight through engagement.

### 4. Engagement Approach

Formal consultation on the OICs will involve engaging with:

- Specified councils in affected areas
- Iwi, hapū and mana whenua in affected areas 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

- Identify key affected Councils
- Build off previously established relationships.

#### 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
- Build off previously established relationships
- Work alongside the Ministry's Treaty settlements and Māori Partnerships and Regional Relationships teams as the relationship holders to support engagement
- Work alongside Councils to provide wider context on the proposed OIC
  - Engagement with Iwi, hapū and mana whenua will be jointly led alongside Councils to provide an overarching engagement package.

#### 4.3 Affected Communities

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

The Ministry will lead engagement on the proposal to create the OIC, supported by key Councils and the HBRRA. We will work alongside council 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 provide feedback during webinars and online hui. Information about the proposals will be provided in the consultation documents.

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

The Ministry is expected to open formal consultation on the week of 27 February, with Monday 18 March being the last day of statutory engagement and the last day for receiving any written feedback.

## Appendix 1

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.

Order	Distribution channel	Purpose	Key stakeholders	Outcome
<b>Hawke's Bay Flood Works and Associated Infrastructure (new)</b>	Face to face meeting(s) with the six Hawke's Bay PSGEs during the proposed 3-week statutory engagement period Include Hawke's Bay Regional Council/ Territorial and Local Authority representatives Mailing, pānui and follow up online hui if required	<ul style="list-style-type: none"> <li>Allow PSGEs to gauge the effect on statutory acknowledgement/deed of recognition areas and other areas of cultural importance</li> </ul>	<ul style="list-style-type: none"> <li>Six post settlement entities where the OIC will apply as the OIC may have implications for Treaty settlement redress</li> <li>Hawkes Bay Regional Council and territorial local authority representatives to be invited to attend in order to answer PSGE questions on the flood works proposals directly</li> </ul>	Targeted engagement to collect, collate and consider feedback to inform any changes to the OIC proposal
	Mailing, pānui and online hui	<ul style="list-style-type: none"> <li>Notification about the proposed OIC, what it intends to achieve and why it is necessary</li> <li>Invite written comments</li> <li>Provide an opportunity to discuss the proposal with stakeholders</li> </ul>	<ul style="list-style-type: none"> <li>Local Authorities whose district or region is covered by the OIC</li> <li>Iwi, hapū, mana whenua to the proposed sites</li> <li>Directly affected communities</li> <li>Department of Conservation, HB Fish &amp; Game Council</li> <li>Heritage NZ Pouhere Taonga</li> <li>Māori collectives (FILG, TTK, FOMA)</li> <li>Takutai Moana (Marine and Coastal Area Act 2011) applicant bodies</li> <li>Te Puni Kōkiri, Te Arawhiti, Te Tumu Paeroa Local government collectives i.e LGNZ</li> </ul>	Collect, collate and consider feedback to inform any changes to the OIC proposals
	General public/media (via Minister's media release/ Ministry for the Environment website)	<ul style="list-style-type: none"> <li>Inform the general public and provide an opportunity to provide feedback</li> </ul>	<ul style="list-style-type: none"> <li>General public</li> </ul>	Consultation is transparent and any member of the public with an interest can provide feedback



## Appendix 2: Location map



### Site Locations:

1. Wairoa
2. Whirinaki
3. Awatoto
4. Waiohiki
5. Ohiti Road (Omahu)
6. Pakowhai
7. Havelock North
8. Porongahau



## Policy and Privacy

### In-Confidence

Office of the Minister for the Environment

Chair, Cabinet Legislation Committee

## Severe Weather Emergency Recovery Legislation (Hawke's Bay Flood Protection Works) Order 2024

### Proposal

- 1 I am seeking Cabinet agreement to submit the Severe Weather Emergency Recovery Legislation (Hawke's Bay Flood Protection Works) Order 2024 (the Order) to the Executive Council and Governor-General for enactment.

### 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 resource consenting process and remove red tape to speed up the rebuild.

### Executive Summary

- 3 The Cabinet 100-Day Plan Committee agreed on 20 February 2024 that an Order in Council (Order) be made to streamline the Resource Management Act 1991 (RMA) consenting process to enable safety enhancements and improvements to the resilience of the Hawke's Bay flood protection infrastructure.
- 4 The Cabinet 100-Day Plan Committee agreed to an Order to amend the RMA and associated regulations, and plans through the process under the Severe Weather Emergency Recovery Legislation Act 2023 (SWERLA) to:
  - 4.1 classify activities, that are not already classed as permitted, as controlled activities (this does not extend to prohibited activities);
  - 4.2 provide a streamlined process for controlled activity resource consents with reduced resource consent application requirements;
  - 4.3 include a list of conditions which will avoid, remedy, or mitigate adverse environmental effects; and
  - 4.4 include conditions which ensure engagement with iwi, hapū, and Māori occurs.
- 5 The Order is limited in geographic scope and duration to ensure that it is no broader than reasonably necessary. The local authorities in Hawke's Bay have identified eight locations requiring new flood protection works and will be responsible for carrying out these works. The works include the construction of stop-banks, spillways, retaining walls, bridges, pump stations, stream realignments and earthworks. Subject to the Order, the Hawke's Bay local authorities intend to secure resource consents in time

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for the flood works to occur in two tranches, with the first tranche starting in October 2024 and the second tranche in mid-2025.

- 6 In seven of the eight locations, the flood works are necessary to ensure residential land in the Hawke's Bay region identified as Category 2A or Category 2C can safely shift to Category 1. A significant number of residents are in limbo at present and there are significant social and economic impacts on the wider community as a result. In the eighth location at Awatoto the works will protect critical infrastructure and industrial land from flooding.
- 7 As required by the SWERLA, the Ministry for the Environment (the Ministry) carried out consultation on my behalf. The Ministry consulted with key stakeholders, including local authorities, iwi, hapū and Māori, and other government agencies. The Ministry has updated the draft Order to take into account the feedback it received. This includes a requirement for resource consent applications lodged under the Order to be determined by independent commissioners and minor wording changes to improve its implementation.
- 8 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). I have considered their feedback in the development of the final Order and have made changes as a result of the Review Panel's feedback. 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 paragraphs 20-22 below). I note access to the courts is preserved as judicial review remains available.
- 9 I am now seeking agreement to submit the attached Order (Appendix 1) to the Executive Council and Governor-General to enact these policy decisions.

### **Background**

- 10 The severe weather events of early 2023 created significant loss and damage to the Hawke's Bay region. The flooding resulted in significant areas of land that is no longer safe to inhabit.
- 11 To address these impacts, the SWERLA established a mechanism for legislation to be amended via an Order to enable recovery activities and provide flexibility, with amendments targeted to specific areas or circumstances.
- 12 Sections 8 and 9 of the SWERLA require engagement to undertaken on the proposals before I can recommend an Order is made. The following subsection describes the consultation feedback received and the subsequent changes to the Order.

### **Analysis**

#### *Consultation feedback*

- 13 During a 3-week engagement period the public were invited to submit written feedback on the proposals. The Ministry also held hui with the general public, iwi, hapū and Māori, and other government agencies. Targeted hui were held with the Wairoa Flood Protection Group, Hawke's Bay PSGEs, Petane Marae and Tatau Tatau Ki Wairoa Trust. A total of 21 written submissions were received.
- 14 Feedback was broadly supportive of the key policy proposals to:

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- streamline the consenting process
  - ‘front end’ the work required for resource consent applications, while ensuring there are no environmental shortcuts
  - specify consent conditions about how adverse environmental effects are to be considered, and to require consultation with key parties during consenting
  - enable additional consent conditions to be imposed to suit local circumstance.
- 15 Other points raised through the feedback from several of the PSGEs and marae that were consulted included a desire to know more about the flood works proposed for each of the eight locations and the impacts and an interest in further engagement and involvement and design of the flood works. This highlighted the importance of the ongoing consultation requirements in the Order.
- 16 Feedback received from iwi, hapū and Māori during public consultation raised concerns at the loss of the RMA appeal rights and signalled a strong interest in the consent applications being determined by independent commissioners.

### *Severe Weather Events Recovery Review Panel Feedback*

- 17 The Review Panel considered the draft Order on 29 April to 1 May 2024. The Review Panel’s recommendations are:

*That the Order would benefit from some clarifications including:*

- *Confirming that the consents will be considered and decided by an independent commissioner*
  - *That in clause 11(2)(e), that the bracketed section ‘(which may be a desktop assessment)’ is removed*
  - *A small number of minor technical drafting issues that have been sent to Ministry for the Environment officials to resolve.*
- 18 The Review Panel raised two additional points that do not require changes to the Order. As the flood works are not yet fully designed the Review Panel emphasised the need for continued engagement by the Hawke’s Bay local authorities with local communities, PSGEs, iwi, hapū, Māori, landowners and marae, especially during the design phases of the works, and noted that the flood protection works are designed to protect landowners in 1:100-year flood events.
- 19 I have had regard to the recommendations provided by the Review Panel and made changes to the draft Order as described in paragraph 26 below.

### *Regulations Review Committee feedback*

- 20 The Committee considered the draft Order on 29 April to 2 May 2024. The Committee’s recommendations centred on the removal of RMA appeal rights and limiting the access to a court in accordance with Standing Order 327(2)(e). Specifically, the Committee recommends:

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- *that clause 14(5) appears to exclude the jurisdiction of the courts without explicit authorisation which is an unusual or unexpected use of the powers conferred under section 7 of the SWERL Act*
- *the committee’s position on section 7 is that while it empowers a wide remit to “grant exemptions from, modify, or extend” any legislation or legislative provisions listed in Schedule 2 of the SWERL Act, that it was not envisaged that the general power in section 7 would be used to truncate the court’s jurisdiction without explicit authorisation.*

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 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 has been well tested in other Orders under the SWERLA, including the Severe Weather Emergency Recovery (Waka Kotahi New Zealand Transport Agency Order) Order 2023, the Severe Weather Emergency Recovery (KiwiRail Holdings Limited) Order 2023, and the Severe Weather Emergency Recovery (Waste Management) Order 2023. I have communicated this policy rationale to the Committee.

22 Furthermore, the nature of controlled activity status is that applications must be granted. This means any appeals on controlled activity decisions would provide little benefit to an appellant as the Environment Court is not able to decline the consent and could only change or add to the consent conditions.

[Redacted] s9(2)(h)

[Redacted] s9(2)(h)

[Redacted] s9(2)(h)

[Redacted] s9(2)(h)

*Changes to the Order to reflect feedback*

26 I have had regard to the feedback received through statutory consultation and review processes and now recommend the following changes:

- 26.1 a requirement that all consent applications for flood protection works are determined by independent commissioners. This is in response to the Review

[Redacted] s9(2)(h)

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Panel's recommendations and is supported by the Hawke's Bay local authorities.

- 26.2 inclusion of a consent condition to set out an accidental discovery protocol. This will only apply when an archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA) is not required. This amendment responded to a request made by Heritage New Zealand to avoid creating costly and onerous processes which duplicate existing processes in the HNZPTA.
- 26.3 ensuring the consulting requirements in the Order extend to 'all' relevant Māori entities<sup>3</sup>. This amendment responded to feedback from the Te Tumu Paeroa – Office of the Māori Trustee that other orders referenced 'a' relevant Māori entity which does not place an express obligation on the consent authority to notify Māori trustees or other Māori entities.
- 26.4 inclusion of infrastructure providers in the list of persons the consent authority is required to invite written comments from when processing a consent application for flood works and to ensure the effects on infrastructure are addressed as a matter of control when assessing the application. This amendment responded to feedback from the New Zealand Transport Agency.
- 26.5 minor wording changes and corrections to improve the legibility and implementation of the Order. These do not change the policy intent of the Order and are in response to feedback from the Review Panel.

### Timing and 28-day rule

- 27 I propose the 28-day rule be waived, and the Order have effect until 31 March 2028.
- 28 I propose that the commencement date of the Order change from 1 June 2024 to 7 June 2024. This accounts for the brief time period between Royal Assent and notification of the Order in the *Gazette*, so that the commencement of the Order is a date after official publication.
- 29 Waiving the 28-day rule will provide certainty to the local authorities and enable them to prepare consent applications at pace. The first tranche of consents are needed in time for construction to start in October 2024.

### *Implementation*

- 30 The Ministry will prepare guidance to support local authorities and landowners to understand the new provisions in the Order and how to meet the modified obligations.

### Compliance

- 31 The Order complies with each of the following:
  - 31.1 the principles of the Treaty of Waitangi
  - 31.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993

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<sup>3</sup> 'Māori entities' is a defined term in the Urban Development Act 2020 and includes post-settlement governance entities (PSGEs), iwi authorities, hapū, and Māori trustees.

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- 31.3 the principles and guidelines set out in the Privacy Act 2020
- 31.4 relevant international standards and obligations
- 31.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

*Compliance with the SWERLA*

- 32 Under section 8(1) of the SWERLA, I am required to be satisfied of certain matters before recommending the making of an Order. Under s 8(1) of the SWERLA I am satisfied that:
  - 32.1 this Order allows the RMA to operate more flexibly to take account of the severe weather events. Hence, I am satisfied this Order is necessary and desirable for meeting the purpose of the SWERLA namely section 3(1) and section 3(2)(b)(i) and (ii)
  - 32.2 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
  - 32.3 the Order does not breach the restrictions set out in section 11 of the SWERLA
  - 32.4 the Order is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990
  - 32.5 the consultation process described in section 9 of the SWERLA has been complied with
  - 32.6 the draft Order has been reviewed by the Severe Weather Events Recovery Review Panel and the Regulations Review Committee.

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

- 33 Under section 8(1)(e) of the SWERLA, if an Order relates to the RMA, I must consider:
  - 33.1 the effects on the environment that could occur as a result of the Order
  - 33.2 whether any adverse effects can be avoided, remedied, or mitigated.
- 34 The flood protection works to be undertaken under the Order will have an effect on the environment. However, this Order includes environmental checks and balances that will address these effects, including:
  - 34.1 the requirement for any resource consent application to include an assessment of all potential adverse effects of the proposed flood protection works
  - 34.2 consent conditions that require the consent holder to engage with certain parties to gain an understanding of the impacts of the proposed works on those parties and to appropriately respond when carrying out the flood protection works
  - 34.3 consent conditions that will avoid, remedy, or mitigate any adverse effects
  - 34.4 matters of control for the consent authority to consider that includes all the key environmental considerations appropriate to the flood protection works.

s9(2)(h)

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s9(2)(h)

36

s9(2)(h)

### **Review of this Order and existing Orders**

- 37 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 orders. This review includes an assessment of determining of whether I continue to be satisfied that the Order continue to meet the necessary or desirable test<sup>4</sup>.
- 38 To meet this 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 supersedes other earlier review dates agreed for specific orders because I consider there are significant benefits in carrying out a holistic review.

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

- 39 The Order in this paper aims to reduce the significant social and economic costs of response and recovery from the flooding that was caused by the severe weather events. This includes the impacts felt in urban, rural farming, business and commercial areas.
- 40 The streamlining of the consenting process for the flood protection works will ensure that construction can begin as quickly as possible.

### **Financial Implications**

- 41 The flood protection works require significant investment, with the Crown contributing \$203 million and the Hawke's Bay local authorities contributing collectively a further \$44 million.
- 42 The Crown has appointed Crown Infrastructure Partners to administer funding arrangements. These funding arrangements support the delivery of the flood protection works and include putting a work programme in place, programme management, and monitoring requirements.

### **Legislative Implications**

- 43 Section 7 of the SWERLA enables orders to be made for the purposes of the SWERLA and allow exemptions from, modifications of, or extensions to provisions in legislation listed in Schedule 2 of the Act, which includes the RMA.
- 44 Orders can only be made where the Minister responsible is satisfied they are reasonably necessary or desirable for one or more purposes of the SWERLA. I am

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<sup>4</sup> S8(1)(a) SWERLA.



satisfied the Order meets these requirements to progress to be recommended to the Executive Council and Governor-General for approval.

## Impact Analysis

### *Regulatory Impact Statement*

- 45 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 (Hawke's Bay Flood Protection Works) Order Supplementary Analysis Report. The panel considers that it **meets** the Quality Assurance criteria.
- 46 The QA panel notes that the Severe Weather Emergency Recovery Legislation (Hawke's Bay Flood Protection Works) Order Supplementary Analysis Report meets the four quality assurance criteria set out by Treasury.
- 47 The Supplementary Analysis Report is comprehensive, well-written and in response to a clear need, with risks and constraints clearly defined and discussed. The QA panel suggests that the document would benefit from a proofreading to ensure continuity in terms used, however, this is a minor suggestion.
- 48 The Supplementary Analysis Report is provided in Appendix 2.

### **Treaty Impact Analysis**

- 49 Pre-engagement on the Order proposal was not able to be undertaken due to limited timeframes. In light of this, 100-Day Plan Cabinet Committee agreed to an engagement period of 3 weeks [100-24-MIN-0010 refers].
- 50 The engagement approach for the Order led by the Ministry included face-to-face hui, follow up online hui and wider online hui with information provided through the Hawkes Bay local authorities' electronic direct mailing list and an invite to Ministry for the Environment contacts.
- 51 There are a number of relevant statutory acknowledgements which are provided through Treaty Settlements and backed by Treaty Settlement legislation. 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. In addition, the RMA requires 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.
- 52 The Order reclassifies discretionary or non-complying activities required for the flood protection works as controlled activities. RMA processes requiring notice to be given to PSGEs will be replaced by a requirement for Māori entities including PSGEs to be notified and invited to make written comments sought on the consent application.
- 53 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 works will occur in or around rivers, estuaries, foreshore, wahi tapū and other cultural heritage sites. This is addressed in the schedule of consent conditions attached to the Order. Māori entities representatives will provide the

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<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).

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consent holder with on-site guidance to manage the impact of the flood works on culturally significant land and other natural and physical resources that have cultural value.

- 54 Officials assessed the proposal in relation to Marine and Coastal area (Takutai Moana) Act 2011 and have concluded that it is unlikely there will be implications for rights under the Act as structures are not being placed in the coastal marine area.

### Population Implications

- 55 Streamlining the consenting process for flood protection works in the eight locations will provide benefit to residents in the Hawke's Bay region. The repair works and project works will ensure that properties identified as Category 2A or 2C will be recategorised as Category 1 and people will be able to safely inhabit their homes once the works are completed.

### Human Rights

- 56 The Order will engage section 27 of the New Zealand Bill of Rights Act 1990 (BORA)<sup>6</sup> as it removes the public and limited notification processes and appeal rights under the RMA. In relation to the RMA, I consider the proposal is a justified limit on the rights and freedoms under NZBORA for the following reasons:

56.1 It is necessary to modify the public and limited notification processes because it will not be possible to complete all necessary resource consent processes in time for the flood protection works to commence in the time frames required by the Hawke's Bay local authorities 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 time to allow the two tranches of works to commence in October 2024 and mid-2025.

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

### Use of External Resources

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

### Consultation

- 58 The SWERLA requires engagement on order proposals. Paragraphs 13 to 26 above provide the feedback received from this engagement and subsequent changes made to the proposals. Appendix 3 provides a summary of the public engagement feedback.

- 59 In the process of developing the proposals, feedback was sought from the Cyclone Recovery Unit (CRU) at the Department of Prime Minister and Cabinet (DPMC) [REDACTED] s9(2)(h) as to compliance with the legislative requirements for an Order. The proposals reflect changes suggested from those discussions and the CRU undertook a quality assurance review of this paper.

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<sup>6</sup> Section 27 provides that every person whose rights, obligations and interests protected or recognised by law have been affected by a determination of any tribunal or other public authority has the right to apply, in accordance with law, for judicial review of that determination.

- 60 The Ministry has consulted with the following agencies on this draft Cabinet paper and Order: the Ministry of Transport (MOT), Department of Internal Affairs (DIA), Ministry for Culture and Heritage (MCH), Ministry for Primary Industries (MPI), Office for Māori Crown Relations – Te Arawhiti, Toitū Te Whenua Land Information New Zealand (LINZ), and Te Puni Kōkiri (TPK). The agencies supported the substance of the Order and MfE has updated the Order to take into account their feedback.
- 61 LINZ has signalled the potential for another Order to streamline land acquisition processes for the flood protection works, in the event that Hawke’s Bay local authorities’ efforts to acquire land through voluntary acquisition are not successful. Any Order would most likely apply to the second tranche of flood works commencing in 2025. LINZ outlined the processes and complexities involved with modifying the PWA, including that no prior Order has undertaken this in relation to Māori land. LINZ emphasised that an Order is a last resort, in the event all other options were exhausted.

### **Communications**

- 62 I will issue a press release at the appropriate time, in consultation with the Minister for Emergency Management and Recovery and the affected local authorities, if necessary.

### **Proactive Release**

- 63 I intend to proactively release this paper once the final Order has been approved by Cabinet and enacted.

## 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 (Order) to enable recovery activities following the severe weather events of early 2023;
- 2 **note** that on 20 February 2024 that the Cabinet 100-Day Plan Committee, with power to act, agreed that an Order be developed which amends the Resource Management Act 1991 (RMA) and associated regulations and plans to streamline the RMA consenting process to enable safety enhancements and improvements to the resilience of the Hawke's Bay flood protection infrastructure [100-24-MIN-0010 refers];
- 3 **note** that, as prescribed in the SWERLA, there was a period of public consultation on the proposal and I have had regard to the comments provided by submitters;
- 4 **note** that, as prescribed in the SWERLA, 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 recommendations provided by the Panel and the Committee;
- 5 **note** that the Cabinet 100-Day Plan 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 [100-24-MIN-0010 refers];
- 6 **note** that the Order has been amended in response to feedback and that the changes fall within the Minister for the Environment's delegated authority;
- 7 **note** I am satisfied that:
  - 7.1 the Order is necessary or desirable for one or more purposes of the SWERLA, namely section 3(1) and section 3(2)(b)(i) and (ii);
  - 7.2 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;
  - 7.3 the Order does not breach the restrictions set out in section 11 of the SWERLA;
  - 7.4 the Order is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990; and
  - 7.5 the consultation process described in section 9 of the SWERLA has been complied with;
- 8 **note** that in regard to the elements of this Order in Council that relate to the Resource Management Act 1991 I have 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;

**IN CONFIDENCE**

- 9 **agree** that the Minister for the Environment may recommend the following Order to the Executive Council and Governor-General for approval: Severe Weather Emergency Recovery Legislation (Hawke's Bay Flood Protection Works) Order 2024;
- 10 **agree** that the commencement date of the Order will be 7 June 2024;
- 11 **agree** to waive the 28-day rule so the Order will come into force on 7 June 2024, which is the final date by which the Order is notified in the *New Zealand Gazette*;
- 12 **agree** that the Ministry for the Environment will undertake a formal 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**

**Appendix 1 – Severe Weather Emergency Recovery Legislation (Hawke’s Bay  
Flood Protection Works) Order 2024**

**Appendix 2 – Supplementary Analysis Report: Severe Weather Emergency  
Recovery Legislation (Hawke’s Bay Flood Protection Works) Order 2024**

# Supplementary Analysis Report: Severe Weather Emergency Recovery Legislation (Hawke’s Bay Flood Protection Works) Order 2024

## Coversheet

Purpose of Document	
Decision sought/taken:	This analysis will inform Cabinet decisions on the proposed Severe Weather Emergency Recovery Legislation (Hawke’s Bay Flood Protection Works) Order 2024
Advising agencies:	Ministry for the Environment
Proposing Ministers:	Hon Penny Simmonds, Minister for the Environment
Date finalised:	Wednesday 15 May 2024
Problem Definition	
<p>Following Cyclone Gabrielle, eight locations in the Hawke’s Bay region were identified where critical safety enhancements and improvements to the resilience of flood protection infrastructure (“flood works”) are required. In seven locations they will enable 975 properties sitting in Category 2A<sup>1</sup> or Category 2C to be re-categorised as Category 1, giving certainty to families and communities, and in the eighth location the flood works will protect Napier’s wastewater treatment plant and nearby industrial area from flooding.</p> <p>Four of the flood works are scheduled to begin in October 2024, with the rest commencing in 2025. However, the complex process of obtaining resource consents under the standard consenting pathway in the Resource Management Act 1991 (RMA) means that delays are likely - potentially by up to one year. This would have a serious impact on people who own or occupy Category 2A or 2C properties in Hawke’s Bay and would slow the region’s social and economic recovery.</p> <p>Currently there are no legislative options that would enable these flood works to be consented in time for construction to begin at the scheduled time.</p>	

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<sup>1</sup> Category 1 is defined as: *Repair to previous state is all that is required to manage future severe weather event risk*

Category 2C is defined as: *Community level interventions are effective in managing future severe weather event risk.*

category 2P is not relevant to this Order. It is defined as: *Property level interventions are needed to manage future severe weather event risk, including in tandem with community level interventions.*

Category 2A is defined as: *Potential to fall within 2C/2P but significant further assessment required.* Nb. Category 3 is defined as: *Future severe weather event risk cannot be sufficiently mitigated. In some cases some current land uses may remain acceptable, while for others there is an intolerable risk of injury or death.*



## Executive Summary

The proposal is for a new Order in Council (OIC) to be made under the Severe Weather Emergency Recovery Legislation Act 2023 (SWERLA). The OIC will provide streamlined processes under the RMA so that the flood works can begin as scheduled, without the delays that would occur if the standard RMA consenting pathway were used.

The proposed OIC was the only option considered by Cabinet, as it is the only viable legislative option for ensuring the flood works can begin in October 2024. It will classify activities, that are not already classified as permitted, as controlled activities (this does not extend to prohibited activities) and enable a faster controlled activity resource consent process.

The benefits of the OIC will significantly outweigh the costs as it will bring earlier certainty to households and allow other recovery activities to follow, supporting the region's social and economic recovery. The main cost will be the removal of people's ability to appeal the consents to the Environment Court, however we anticipate that few people would be disadvantaged by this as the OIC contains provisions requiring engagement with specified persons. During consultation we found wide support for the flood works.

The proposed OIC includes consent conditions to manage the implementation of the flood works. They include conditions that manage adverse environmental effects and ensure engagement occurs with iwi, hapū and Māori and stakeholders.

Implementation of the OIC will be monitored by the Hawke's Bay Regional Council (HBRC) and relevant territorial local authorities, and the OIC will be regularly reviewed by the Ministry for the Environment (MfE) as part of our schedule of OIC reviews.

## Limitations and Constraints on Analysis

### Limitations on the problem definition or options considered

The main constraint, on both the problem definition and the options considered, has been the timeframes for commencement of the flood works - namely that four should commence in October 2024 and the rest in the following year. This has reduced the legislative options (listed in Appendix 1) that may otherwise have been available as alternatives to the standard consenting pathway under the RMA.

It is proposed that the OIC should 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 speed up recovery from the severe weather events of 2023. MfE has considerable experience of using the SWERLA to develop a range of OICs that are currently supporting recovery.

### Constraints on Analysis

The need to have resource consents in place by October 2024 has limited the time available for consulting on the OIC. In-depth, focused consultation was conducted with a range of affected groups (see Appendix 2) however a longer timeframe might have encouraged people to take longer to develop their responses, providing more nuanced information to inform our responses and the cost/benefit analysis.

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

s9(2)(a)

Ministry for the Environment

s9(2)(a)

15 May 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 (Hawke’s Bay Flood Protection Works) Order Supplementary Analysis Report. 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 (Hawke’s Bay Flood Protection Works) Order Supplementary Analysis Report meets the four quality assurance criteria set out by Treasury.</p> <p>The Supplementary Analysis Report is comprehensive, well-written and in response to a clear need, with risks and constraints clearly defined and discussed. The QA panel suggests that the document would benefit from a proofreading to ensure continuity in terms used, however, this is a minor suggestion.</p>

## 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 Cyclone Gabrielle

1. In February 2023 Cyclone Gabrielle inflicted significant loss and damage with impacts on the economy, infrastructure, natural environment, primary sector businesses, and community wellbeing. In the Hawke's Bay region, over 10,000 hectares of horticultural land were damaged; lost production in 2023 was estimated at \$230m<sup>2</sup>; over 120 bridges were either significantly damaged or destroyed, and substantial areas of land in the region are no longer safe to inhabit. In places, the flood defences were overwhelmed or breached and need to be rebuilt or enhanced to improve their resilience.
2. The Hawke's Bay Regional Recovery Plan<sup>3</sup> (the 'recovery plan'), developed through community engagement by the Hawke's Bay Regional Recovery Agency (HBRRRA)<sup>4</sup>, describes 355 regional recovery actions that are needed over the medium and long term. They include the removal of silt and debris; restoring and enhancing flood protections; environmental restoration; rebuilding critical roading and rail infrastructure and other key infrastructure assets; and ensuring that displaced people can access liveable accommodation. The recovery plan is supported by the locality plans prepared by the Hawke's Bay local authorities. Locality plans are documents developed to provide a recovery plan for a specific locality.
3. The recovery plan identifies flood protections as 'a precondition for many recovery activities to ensure recovery actions and works are protected from the potential future impacts of flooding.' (p.56). It proposes flood works in eight locations:
  - In seven locations, flood protection works (including the construction of stop-banks, culverts, retaining walls, bridge works, stream realignments, and earthworks) will enable approximately 975 properties sitting in Category 2A or Category 2C<sup>5</sup> to be re-categorised as Category 1 and will support the economic and social recovery of the region.

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<sup>2</sup> Regional Data Snapshot, MBIE: [Hawke's Bay data snapshot \(mbie.govt.nz\)](https://mbie.govt.nz/hawkes-bay-data-snapshot)

<sup>3</sup> Hawke's Bay Regional Recovery Plan, September 2023: [FINAL-Hawkes-Bay-Regional-Recovery-Plan.pdf \(hawkesbayrecovery.nz\)](https://www.hawkesbayrecovery.nz/plan),

<sup>4</sup> The HBRRRA includes representatives from councils, iwi, hapū and six Post-Settlement Governance Entities.

<sup>5</sup> Category 1 is defined as: *Repair to previous state is all that is required to manage future severe weather event risk*

Category 2C is defined as: *Community level interventions are effective in managing future severe weather event risk.*

category 2P is not relevant to this Order. It is defined as: *Property level interventions are needed to manage future severe weather event risk, including in tandem with community level interventions.*

Category 2A is defined as: *Potential to fall within 2C/2P but significant further assessment required.* Nb. Category 3 is defined as: *Future severe weather event risk cannot be sufficiently mitigated. In some cases some current land uses may remain acceptable, while for others there is an intolerable risk of injury or death.*

- In the eighth location (Awatoto), flood protection works are needed to protect Napier’s wastewater treatment plant and nearby industrial area from flooding.
4. The recovery plan recommends that these critical flood works should begin urgently: four should begin in October 2024, and the remaining four by mid-2025.
  5. The flood works are already funded and supported by the locality plans. However, before they can begin,
    - resource consents are needed under the Resource Management Act 1991 (RMA). The consents are a major component of the recovery programme, with significant implications to the delivery of the flood works if the consents are delayed.
  6. Obtaining resource consents under the standard consents process in the RMA would be a complex process involving, for example, public notification and/or limited notification of consent applications. This would likely lead to lengthy processing timeframes, and public participation in the consent decision-making could potentially lead to Environment Court appeal proceedings that typically span several years before consents are issued. As a result, the flood works could not begin at the times recommended in the recovery plan, and this would significantly affect regional recovery.

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

**The flood works will go ahead but will be significantly delayed**

7. The status quo is that there is no Order in Council (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<sup>6</sup>. This would miss the opportunity to undertake the flood works within a timescale that would enable earlier recovery from the severe weather events.
8. As seven residential locations were especially affected by the cyclone, slow consenting processes are a region-wide problem. A staff report from the Hawke’s Bay Regional Council (HBRC) notes the implications of residential dwellings remaining in Category 2<sup>7</sup>:

*It was acknowledged early on by Council that there are significant social implications for prolonged periods in Category 2. Examples include living in temporary accommodation, withholding of new building consents, builders declining work due to builders’ insurance concerns, insurance companies with-holding payments, financial pressures associated with mortgage repayments and people highly stressed that any financial help they had with short term accommodation was fixed at 6 or 12 months.*

9. Specific impacts of delaying the flood works would be:
  - Residential land remains subject to flooding risk, thus prolonging residents’ stay in temporary accommodation as they would be unable to reoccupy, repair or rebuild their homes

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<sup>6</sup> National Environmental Standard Freshwater (NESF) and National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS).

<sup>7</sup> Hawke’s Bay Regional Council, *Meeting agenda 13 December 2023, Land Categorisation update, page 37.* [Agenda of Regional Council Meeting - Wednesday, 13 December 2023 \(infocouncil.biz\)](https://www.infocouncil.biz)

- Continuing loss of investment certainty on the part of affected landowners and local communities due to ongoing questions as to whether the land in Category 2A and 2C areas can be reclassified as Category 1
  - Continuing loss of investment certainty for suppliers of materials required to support the recovery programme. The flood works will require new sources of aggregate and other materials close to the work sites, which will require investment in new sites, plant and machinery by the private sector. Without the certainty of early consents being in place for the flood works, the private sector may be unwilling to invest to increase supply above pre-cyclone levels.
10. Seeking and obtaining resource consents via the standard RMA consenting pathway would require significant resourcing from Hawke's Bay local authorities in the consenting process as they would have to prepare notified resource consent applications and, as the consent authority, process them. Additional resourcing would also be required if the consents were appealed to the Environment Court.

### **'Toolbox' or Incremental approach**

11. If it was decided to use a 'toolbox' approach with some consents sought on a non-notified basis, and the more complex, contentious ones being notified, the successful delivery of the flood works would be put at risk. While there are precedents for running a consenting programme in this way (eg, the consenting programme for projects to revitalise Auckland's downtown CBD and waterfront areas), it also requires significant staff and specialist technical resources that are beyond those presently available in the Hawke's Bay region and a consolidated approach at both the governance and implementation levels (eg, the Auckland CBD/waterfront consenting programme was undertaken by a Unitary Authority, subject to a unitary resource management plan).
12. If the flood works are not advanced as a consolidated project, for example if an incremental, risk-based approach is taken (resulting in parts of the recovery programme being advanced on the basis of RMA activity status and potential consenting risk, rather than as a consolidated project or on actual need or priority), the recovery programme would become more expensive because there would be less opportunity to achieve economies of scale, and completion of the recovery programme would take longer to achieve.
13. Taking either a 'toolbox' or an incremental approach to the flood works would risk loss of confidence in the recovery plan by people and communities in the region. It is also likely that the private sector would be unable to commit scarce engineering and technical resource if a smaller scale approach was adopted.

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

14. The 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.
15. 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.

16. Consents for the 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 (listed in **Appendix 1**).

**Previous government decisions, legislation, or Regulatory Impact Statements in this area that are relevant to this problem**

**Orders in Council**

1. In recent years New Zealand has faced several big shocks that require a quick planning response for economic recovery, and legislation has been developed to enable fast-tracking of development. Examples include the recovery-related legislation for the Christchurch and Kaikoura earthquakes, and the COVID-19 pandemic. These pieces of legislation have directly enabled infrastructure projects that would otherwise not have occurred through the standard RMA process.
2. Several OICs have already been made under the SWERLA<sup>8</sup> to address the needs of regions affected by Cyclone Gabrielle. Regulatory Impact Statements for individual OICs are not available because Cabinet decided that, given the urgency of the situation following the cyclone, Regulatory Impact Statements were normally not required.

**Are there any other ongoing government work programmes with interdependencies and linkages to this area that might be relevant context from a systems view?**

3. The table below shows the relevant government work programmes.

Title	Focus	Interdependencies or linkages to the proposed Flood Works Order in Council
Fast-track Approvals Bill	The legislation will provide for a one-stop-shop fast-track consenting regime for significant infrastructure and development projects <sup>9</sup> . The purpose is to ensure more rapid and less costly consenting processes for major projects and less burdensome application processes, to provide an increase in favourable decisions for major projects with regionally or nationally significant benefits <sup>10</sup> .	The new fast-track legislation will ultimately remove the need for future OICs that modify RMA consenting processes. For the flood works, the legislation would be less useful than the proposed OIC because: <ul style="list-style-type: none"> <li>• It will not be available in time to consent the first tranche of flood works starting in October 2025 and potentially the second tranche of works starting mid-2025</li> </ul>

<sup>8</sup> Listed and described in [Report on Operation of the Severe Weather Emergency Recovery Legislation Act 2023 since 13 April 2023 - October 2023 - Severe Weather Events Recovery Review Panel, Department of the Prime Minister and Cabinet \(dpmc.govt.nz\)](#)

<sup>9</sup> CAB-24-MIN-0008

<sup>10</sup> Supplementary Analysis Report: Fast-track Approvals Bill, 29 February 2024, Ministry for the Environment



Title	Focus	Interdependencies or linkages to the proposed Flood Works Order in Council
		<ul style="list-style-type: none"> <li>• it will provide a consenting process for permits and authorisations required under other legislation</li> <li>• it will be challenging to use the single-fast track consent process across the multiple consent applications and sites of the flood works.</li> </ul>
Adaptation framework	The framework, when developed, will support several key government priorities such as well-functioning insurance, financial and property markets; providing clarity to infrastructure operators; resource management and emergency management reform <sup>11</sup> .	<p>The OIC will support the priorities of the adaptation framework by providing a faster process for obtaining the relevant consents, enabling the flood protection to be completed earlier. There are probable linkages are with the following work programmes that are related to the adaptation framework:</p> <ul style="list-style-type: none"> <li>-Local Water Done Well</li> <li>-Resource Management reform</li> <li>-Going for Housing Growth</li> <li>-Critical Infrastructure Resilience.</li> </ul>
National Adaptation Plan (2022) <sup>12</sup>	The purpose is to build climate resilience through a national adaptation strategy. It focuses on better risk-informed decisions, climate-resilient development, communities' assessment of adaptation options, and embedding climate resilience into all of the Government's work.	The flood works will be essential for climate resilience across the Hawke's Bay region. By providing a faster consenting pathway, the proposed OIC will support the National Adaptation Plan aim (p.4) of '[reforming] the resource management system to support resilient buildings, infrastructure and communities and encourage future growth and development in the right locations.'

### What is the policy problem or opportunity?

- The policy problem is that there is no legislative option that would enable the flood works to begin by October 2024. MfE has reviewed all potential consenting pathways (including the retained fast-track consenting pathway from the now repealed Natural and Built Environment Act 2023 (NBA)) and has determined that a new, streamlined consenting pathway is needed, to ensure the works can begin, and be completed, without delays.
- The key reasons for consents needing to be secured at pace are:
  - The flood works are necessary to ensure residential land in the Hawke's Bay region identified as Category 2A or Category 2C can safely shift to Category 1. A significant number of residents are in limbo at present and there are significant social and economic impacts on the wider community as a result.
  - The flood 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 (ie, October to April) to

<sup>11</sup> [Draft Cabinet paper: Progressing an adaptation framework \[BRF-4437\] April 2024](#)

<sup>12</sup> [Urutau, ka taurikura: Kia tū pakari a Aotearoa i ngā huringa āhuarangi. Adapt and thrive: Building a climate-resilient New Zealand \(environment.govt.nz\)](#)

ensure environmental effects (eg, sediment runoff) are managed. For four of the project locations this means resource consents need to be in place by October 2024 for works to occur in the next season. If not, commencement of all eight flood works will be delayed by approximately one year.

- All possible alternative consenting pathways have been assessed and none can deliver the consents in time to achieve the milestones in the recovery plan's work programme (see **Appendix 1**).
  - The works are funded and are a key action in recovery plan and supported by the locality plans.
6. Streamlining the processing and granting of resource consents would also be beneficial because of the following reasons:
- Resource consents serve a dual purpose. Under the RMA, resource consents enable the works to proceed, subject to any conditions. Resource consents are also a significant 'gateway' in the work programme as they confirm the scope of works (such as the conditions that must be met), give assurance that the project may proceed, and signal that the necessary funding, plant, equipment, sites, and construction staff can be confirmed. In many cases these resources, being of a highly technical and specialist nature, are scarce, and hence have long lead-in times to procure. Consents must therefore be secured early otherwise the whole programme of works is put at risk.
  - Streamlining means that the conditions of consent can be established and known at an early stage in the project timeframe. Consent conditions are a significant part of the engagement process as they require Māori entities representatives and stakeholder advisory groups to be established for the duration of the flood works; within 20 working days of consents being granted. The use of such groups is now commonplace on major infrastructure projects and enables concerns about the operational aspects of construction (such as noise, traffic movements, and hours of operation) to be worked through in consultation with local communities. They also enable Iwi/ Hapū to be involved in the project, including by undertaking cultural monitoring, site blessings, and staff inductions. Without these mechanisms in place, parties have sought redress on operational matters through appeals to the Environment Court.

#### **Who is affected by this issue?**

7. Until the cyclone, the Hawke's Bay region had been 'outperforming the national economy for a number of years, driven by our traditional strengths in horticulture, agriculture and viticulture, alongside tourism and a construction boom.' Delays to the flood works will mean that the negative effects of the cyclone on the economy will continue for longer, with impacts felt by people in urban, rural, farming, business and commercial areas, and by tangata whenua.
8. The ongoing impacts on Māori housing are particularly severe<sup>13</sup>, as the region was already short of around 3000 houses before the cyclone. In Wairoa, where (as of September 2023) 80% of the population lived in highly deprived communities, the effects of the cyclone have deepened the existing economic and social problems<sup>14</sup>.

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<sup>13</sup> Hawke's Bay Briefing to the Incoming Government, November 2023, HBRRA: [HB-BIM-Final-29-Nov-23.pdf](https://www.hbrra.govt.nz/wp-content/uploads/2023/11/HB-BIM-Final-29-Nov-23.pdf) ([hawkesbayrecovery.nz](https://www.hawkesbayrecovery.nz))

<sup>14</sup> *Wairoa had a significant housing crisis before Cyclone Gabrielle, with an estimated shortfall of 150 homes. The cyclone compounded this critical situation, with over 431 buildings affected. .... Half of these were uninsured or underinsured.* (Wairoa District Council, Briefing paper to Ministers, 8 December 2023)



9. Overall, delays to obtaining resource consents will mean that:
- Residential land remains subject to flooding risk, causing significant economic and social costs to the community as residents are unable to reoccupy, repair or rebuild their homes. People remain highly stressed that any financial help they had with short term accommodation was fixed at 6 or 12 months and households have aggravated financial pressures associated with mortgage repayments<sup>15</sup>
  - Loss of investment certainty on the part of affected landowners and local communities due to ongoing questions as to whether the land in Category 2A and 2C areas can be reclassified as Category 1
  - The private sector is unable to commit scarce resources to the flood works if they are done on a smaller scale, incremental approach
  - Builders decline work due to insurance concerns; insurance companies withhold payments. Possible closure of companies due to high insurance premiums, and loss of associated employment opportunities<sup>16</sup>.

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

### Objectives

10. The objective is for a locally led, central government supported approach that enables resource consents for the flood works to be obtained faster than is currently possible under the standard RMA consenting pathway. This will mean:
- People and communities in the Hawke's Bay region can recover earlier from the effects of Cyclone Gabrielle and are protected against future events through the construction of the flood works
  - The significant social and economic costs of response and recovery from the flooding are reduced at an earlier stage than would be possible under the standard RMA consenting pathway. This includes the impacts felt in urban, rural farming, business and commercial areas.
11. 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.

### Outcomes

12. The intended outcome is for an OIC, made under the SWERLA, that provides for a faster, streamlined consenting process for the flood works, enabling them to begin at the time recommended in the recovery plan.

### Targets

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<sup>15</sup> Hawke's Bay Regional Council, *Meeting agenda 13 December 2023, Land Categorisation update, page 37.* [Agenda of Regional Council Meeting - Wednesday, 13 December 2023 \(infocouncil.biz\)](#)

<sup>16</sup> CEO of SBT Group wrote to MfE supporting the proposed OIC (13 March 2024): 'Moving properties to Category 1, and proving reduced risk levels, will bring immediate and significant upside for our companies with regards to insurance renewal discussions as well as premium, and deductible relief .... additional protection to people, their properties, and their ongoing employment opportunities is welcome news'.

13. The targets focus on timelines as the streamlined consenting process needs to be in place by the required time (ready for commencement of the flood works by the time indicated in the recovery plan).
- OIC agreed by Cabinet by May 2024
  - OIC in legislation in June 2024
  - Flood works (first 4 locations) begin by October 2024
  - Flood works (second 4 locations) begin by mid-2025.

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

### What scope will options be considered within?

14. The scope of feasible options is limited by the SWERLA being the only mechanism available, at present, to develop legislation for fast-tracking the RMA consenting process. Non-regulatory options for undertaking the works are not available.

### What options were considered by Cabinet?

15. The only option considered by Cabinet was an OIC, made under the SWERLA, to provide streamlined processes under the RMA to enable safety enhancements and improvements to the resilience of the Hawke's Bay flood protection infrastructure.
16. Cabinet did not consider the other available legislative options as they would have delayed the flood works (see **Appendix 1**).
17. The only viable non-legislative option is to do nothing and not undertake the works. This will not achieve the purpose of the Act to assist people and communities to recover from the effects of Cyclone Gabrielle as the flood works are necessary to ensure Category 2A and 2C residential land can be reidentified as Category 1 land and in the case of Awatoto to protect critical infrastructure, being Napier's wastewater treatment facility<sup>17</sup>, and to protect the adjacent industrial area.

### What was the Government's preferred option, and what impacts will it have?

18. The only option (apart from doing nothing) is for a new OIC to be made under the SWERLA. Section 7 of the SWERLA enables OICs to be made for the purposes of the SWERLA and allows exemptions from, modifications of, or extensions to provisions in legislation listed in Schedule 2 of the Act, which includes the RMA.
19. The new OIC relates to recovery from Cyclone Gabrielle in the districts and regions of the following local authorities:
  - Hawke's Bay Regional Council
  - Central Hawke's Bay District Council
  - Hastings District Council
  - Wairoa District Council
  - Napier City Council.
20. The overall impact of the OIC is that it will enable critical flood works to begin earlier than would be possible under the standard RMA consenting pathway. The flood works are necessary to provide for planning, rebuilding, and recovery, including the rebuilding of land, infrastructure, and other property. The flood works will support the implementation of the recovery plan by enabling category 2C and 2A houses to be shifted to Category 1, allowing people to inhabit their homes safely and helping the region to recover from the effects of the cyclone.

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<sup>17</sup> The Napier wastewater treatment facility also falls under the definition of 'lifeline utility' in the Civil Defence and Emergency Management Act 2002.

## Key features of the preferred option

21. The OIC will amend the RMA and associated regulations and plans through the process under the SWERLA. The key features are:
- I. The OIC will classify activities, that are not already classed as permitted, as controlled activities (this does not extend to prohibited activities)
  - II. The OIC will provide a streamlined process for controlled activity resource consents with reduced requirements for resource consent applications
  - III. Consent holders will be required to set up a stakeholder advisory group of representatives, including representatives of relevant Māori entities, and to appoint a Project Engagement Lead to act as the consent holder's main point of contact
  - IV. Māori entities may provide a team of cultural monitors to support the Māori representatives, and may provide the consent holder with on-site guidance to enable effective management of impacts on culturally significant land and other resources with cultural value
  - V. The consent holder must develop and implement a communications plan that includes access to a description of the proposed flood works and a list of people and entities that will be communicated with
  - VI. The consent holder will be required to prepare a construction environmental management plan (CEMP) that describes, amongst other matters, procedures for the management of hazards such as contaminants and dust, and for managing risks relating to the use of water or discharge to land or water
  - VII. Principles and requirements for minimising damage to the environment from the flood works. These relate to (for example) managing the impacts of earthworks, preventing the discharge of soil and stormwater to waterways, mitigating erosion, ensuring safe disposal of contaminated materials, protecting rivers, avoiding flooding, and managing ecological loss.

## How will this option deliver the objectives identified in relation to policy problem/opportunity?

22. The objectives identified in relation to the policy problem/opportunity, and how the option will deliver them, are given in the table below:

Objective	How the option will deliver the objective
A locally led, central government supported approach that enables resource consents for the flood works to be obtained faster than is currently possible under the standard RMA consenting pathway.	The OIC will modify the RMA by providing for a streamlined and faster process. The process will be used by local councils in the Hawke's Bay region to obtain the consents needed for the flood works.
People and communities in the Hawke's Bay region can recover earlier from the effects of Cyclone Gabrielle and are protected against future events through the construction of the flood works	The OIC would amend the RMA and associated regulations and plans, to: <ul style="list-style-type: none"> <li>• classify activities, that are not already classed as permitted, as controlled activities (this does not extend to prohibited activities); and</li> <li>• provide a streamlined process for controlled activity resource consents with reduced resource consent application requirements.</li> </ul>

Objective	How the option will deliver the objective
	<p>The re-classification of activities will enable the flood works to begin, and be completed, within the timeframes recommended in the recovery plan.</p> <p>The flood works will enable 169 houses currently categorized as 2C and 765 houses currently categorized as 2A to be recategorized to category 1. The flood works will also safeguard residential areas and critical stretches of land from future flooding.</p>
<p>The significant social and economic costs of response and recovery from the flooding are reduced at an earlier stage than would be possible under the standard RMA consenting pathway. This includes the impacts felt in urban, rural farming, business and commercial areas.</p>	<p>The OIC will enable the recovery process to speed up by approximately one year as compared with the status quo (the standard RMA consenting pathway), allowing people to move out of temporary accommodation and into permanent housing. The faster completion of the flood works will mean earlier opportunities to rebuild communities and businesses, leading to more employment and better longer-term prospects for people across the region.</p>
<p>The aims of the RMA would be supported</p>	<p>The OIC will include a list of conditions which will avoid, remedy or mitigate adverse environmental effects as well as conditions which ensure engagement with iwi, hapū and Māori occurs. Also, the proposed OIC is temporary and will expire along with the SWERLA on 31 March 2028.</p>

### What is the level of stakeholder support for this option?

23. The table in **Appendix 2** shows the latest information we have about stakeholders' support for the OIC following an extensive engagement process. Many of the concerns expressed by stakeholders did not focus specifically on the OIC but on previous engagements with the Crown or councils on recovery, or the potential impacts of the flood works.
24. Specific concerns expressed by several Marae representatives related to the extent of engagement by the Crown and the regional council with iwi, hapū and Māori (relating to engagement on recovery following the severe weather events).
25. Officials have used feedback from stakeholders to make refinements to the draft OIC. For example:
  - Some stakeholders said that each of the flood works should be sensitive to the unique environment (and population) where it is located. Officials have worked with HBRC to ensure that the conditions in the OIC can be tailored to the local context.
  - To address concerns about the need to inform affected groups about the flood works, a stakeholder advisory group was included in the schedule of consent conditions to help inform design, management, and monitoring of construction works.

### What are the Distributional Impacts of the option?

26. The table below indicates the likely impacts of the OIC (that is, the impacts of the flood works commencing earlier than would be possible under the standard RMA consenting process) on social groups. A significant difference between the consenting pathways is that, under the OIC, no RMA appeals or objections will be

allowed. Although positive impacts of the flood works will be experienced faster if the OIC is used, the inability to appeal may bring negative impacts for some social groups. A specific example is where parties want the flood work to occur in a different location, or not at all.

Stakeholders	Likely Impacts (direct/indirect)	Magnitude of impacts	Policy analysis tools that can gauge the impacts (examples only)
Māori as individuals	Earlier flood protection will speed up housing and employment security, accelerating the ability of people to plan with certainty. This will help to address the disproportionate disadvantages experienced by Māori who were displaced by the severe weather events – such as in education, employment, health, and wellbeing.	High	Indicators of (for example) education, health, employment, wellbeing and the proportion of displaced Māori households in temporary or permanent housing.
Māori as iwi, hapū, whanau	Earlier commencement of the flood works will support efforts to rebuild or secure cultural infrastructure (including marae, papakāinga and urupā) for future generations.  At least one of the flood works will modify the natural environment and may require works to occur on customary Māori land.  Inability to use RMA appeal rights may cause impacts to Māori interests and reduce benefits	High	Indicators of Māori wellbeing (see above), also the speed with which cultural infrastructure is rebuilt or secured.
Disabled people	Disabled people are more likely to live in low-cost housing rentals and to suffer isolation when infrastructure is disrupted <sup>18</sup> . Flood protection will support investment in new rentals in the affected areas and enable infrastructure to be built that supports better access for disabled people	Medium (but also represented in the impacts on other groups eg, women, Māori)	Indicators of wellbeing for disabled people (including limitations and barriers to participation). <sup>19</sup> Impacts such as in housing, employment, health are more likely to be seen over the longer term as civil infrastructure is built following the flood works
Seniors	In 2018, around 18% of people in the region were	High	Community resilience and wellbeing indicators including health statistics,

<sup>18</sup> Cyclone Gabrielle by the numbers – a review at six months, Public Health Communication Centre Aotearoa, 14 August 2023: [Cyclone Gabrielle by the numbers – A review at six months \(phcc.org.nz\)](https://phcc.org.nz)

<sup>19</sup> Developing an indicator relating to disability, Social Wellbeing Agency|Toi Hau Tangata, October 2022: [Te-Atatu-Developing-an-indicator-of-disability.pdf \(swa.govt.nz\)](https://www.swa.govt.nz)

<b>Stakeholders</b>	<b>Likely Impacts (direct/indirect)</b>	<b>Magnitude of impacts</b>	<b>Policy analysis tools that can gauge the impacts (examples only)</b>
	aged 65 or over <sup>20</sup> . A reduced flood risk and the ability to live in permanent housing or aged care facilities will encourage people to stay in the region, rebuild communities, work longer (including voluntary work), and support local business		local business success, and levels of paid and voluntary work done by seniors.
Women	Women will benefit from eg, security of housing, schooling, employment, more safety <sup>21</sup> . Women and girls are powerful agents of positive change ... after disasters <sup>22</sup> , hence the impacts on women will extend to families, businesses, and communities	High (also represented in the impacts on other groups)	Indicators of community adaptation and resilience, and business activity; indicators of family and community wellbeing; proportion of women of working age in employment.
Gender diverse	Due to previous marginalisation, gender diverse people are nearly twice as likely to be displaced after disasters and suffer from (eg) safe access to bathrooms or sleeping places <sup>23</sup> . Following the flood works, more permanent housing and infrastructure should reduce isolation, provide better services and support, and strengthen community affirmation of gender identity	Medium (also represented in the impacts on other groups)	Indicators of community adaptation and resilience; indicators of family and community wellbeing.
Pacific peoples	Pacific peoples (around 9,400 at the 2018 Census) will benefit from less time in temporary housing and faster employment opportunities. This will strengthen individuals' and families' ability to live and thrive in the region	Medium	The proportion of displaced Pacific peoples in short term or permanent housing and employment; indicators of education, health, wellbeing, business activity.

<sup>20</sup> Census 2018: [Age distribution of people residing in the Hawke's Bay Region, New Zealand - Figure.NZ](#)

<sup>21</sup> Gender-based violence can rise following disaster (Gender Dimensions of Disaster and Resilience, GFDRR, 2021: [World Bank Document \(unwomen.org\)](#))

<sup>22</sup> Global Facility for Disaster Reduction and Recovery (GFDRR) Annual Report 2023: [GFDRR Annual Report 2023 | GFDRR](#)

<sup>23</sup> Center for Disaster Philanthropy: [LGBTQIA+ Communities and Disasters - Center for Disaster Philanthropy](#)



Stakeholders	Likely Impacts (direct/indirect)	Magnitude of impacts	Policy analysis tools that can gauge the impacts (examples only)
Rural communities	Rural cohesion will be strengthened by the flood works being built faster than via the standard RMA consenting pathway. People will feel encouraged to stay in the area and resume business activities, and farmers will have certainty earlier that land in the 8 locations (which includes some rural as well as residential land) will be future protected from flooding. This should speed up investment in the rural communities and businesses, creating greater wealth in the region	High	Indicators of community cohesion, resilience, and business activity including farming. Proportion of farmers affected by the flooding who choose to stay in the region. Indicators of farming productivity, resilience, investment, and long-term prospects.
Ethnic communities	In 2018, around 11,000 people in the region identified as Asian or Middle Eastern, Latin American, or African <sup>24</sup> . As the flood works will provide faster security for households, employment, and business, bringing better community cohesion, they will support these communities' decisions in relation to staying in and contributing to the region.	Medium (also represented in the impact on other groups eg, women)	Indicators of community cohesion, resilience, employment, business activity, regional inflow/outflow.

### Will there be an increase or decrease in the benefit to society compared with the status quo or counterfactual option?

27. As indicated in the above table, the overall impacts of the OIC are likely to be positive from a distributional perspective. This is because the availability of a streamlined consenting process, via the OIC, will enable critical flood works to commence earlier than would be possible under the standard RMA consenting pathway.
28. The trade-off is that, for brevity, the OIC proposes an alternative, streamlined process that short-circuits public participation. The OIC would provide particular people with the opportunity to comment on the consent applications, but this would not provide RMA submission or appeal rights. Judicial review would still be available. This is the same approach followed in the Severe Weather Emergency Recovery (Waste Management) Order 2023, the Severe Weather Emergency Recovery (Land Transport Funding) Order 2023 and the Severe Weather Emergency Recovery (Waka Kotahi New Zealand Transport Agency) Order 2023.

<sup>24</sup> [Ethnic groups of people residing in the Hawke's Bay Region, New Zealand - Figure.NZ](#)



29. The alternative consultation process in the OIC requires the consent authority, within five days of a consent application being lodged, to notify local iwi, hapū and Post-Settlement Governance Entities (PSGEs); each local authority in whose district or region the work is to be undertaken; relevant agencies; adjacent owners and occupiers; any relevant network utility operators; any requiring authority that holds a designation over the land in the work area; any other persons with appropriate interest, and those with interests in the coastal marine area. These persons will be invited to make written comments on the application within 10 working days.
30. The timeframe for written comments is necessarily short to ensure the commencement of the flood works is not unduly delayed. Following engagement, the consent authority will summarise the comments received and finalise its consent decision.
31. Also proposed is that the OIC should include a schedule setting out the consent conditions the consent authority will impose. This will give the applicant and other interested parties certainty at the outset on conditions (note that the consent authority in most cases will be the HBRC, acting independently of its other role as asset manager and applicant).
32. Under these alternative arrangements, some people will have reduced ability to prevent or further question the works. Iwi, hapū and Māori are the group that is likely to be particularly negatively impacted if the flood works occur on customary Māori land, noting landowner agreements will need to be in place before the works begin.

**Is the Government’s preferred option they took forward also your agency’s preferred option?**

33. The option presented to Cabinet is the agency’s preferred option.

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

34. In this analysis we have considered the cost of the preferred option (the OIC) as compared with taking no action (using the standard RMA consenting pathway).
35. The alternative future option is the fast-track consenting legislation which will not be available to ensure the flood works can commence at the time required. The time saved by the fast-track consenting process as compared with the standard RMA consenting pathway would be similar to the time saved that is provided by the OIC, when compared to the RMA process. However, waiting for the fast-track consenting pathway to become available would nullify that time gain and therefore the RMA pathway would be the preferred option in the absence of an OIC.

**Assumptions**

36. We have assumed that the primary impact on the groups listed in the table below will be the time that is saved by using the OIC, and that the more time is saved, the higher the likely impact. An explanation of low, medium and high impact is given below:
  - Low impact: The difference between the impact from the OIC pathway and the RMA pathway are expected to be nil or negligible.
  - 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.
  - High Impact: The difference between the impact from the OIC pathway and the RMA pathway are expected to be substantial (higher or lower).

37. In the table, impacts are described as one-off, or ongoing. One-off impacts will normally not last beyond a specific stage in the flood works (eg, the time when consents are being applied for). Ongoing impacts are longer, may extend over several years, and may generate a variety of other impacts that are not anticipated here.

Affected groups	Comment	Impact	Evidence Certainty <i>High, medium, or low</i>
<b>Regulated groups</b>			
Councils <sup>25</sup>	<p>Under the OIC, the applicant is likely to be HBRC (as asset manager and developer of the flood works), and consent applications for the Awatoto and Havelock North flood works lodged by Napier City Council and Hastings District Council respectively. This is unchanged from the standard RMA consenting pathway where councils frequently apply for resource consent for major projects in their district or region.</p> <p><i>High evidence certainty. The process is set out in the OIC and councils are aware of the process (and ready to act as soon as the OIC is in place).</i></p>	No impact	High
Landowners	<p>Under the OIC:</p> <ul style="list-style-type: none"> <li>- Any mandatory purchase of properties will be completed earlier, providing faster certainty for landowners</li> <li>- Owners of properties on affected land will have faster certainty that properties can be safely rebuilt, or new properties safely built</li> <li>- Landowners will benefit from an earlier ability to build /sell properties and receive rents in areas formerly affected by flooding.</li> </ul>	High (ongoing)	High

<sup>25</sup> Under the OIC, councils have specific and separate roles as regulator and regulated parties: (a) as asset manager and developer to prepare consent applications (or variations to existing consents), (b) as a consent authority under the RMA to process and determine applications (directly or via a contracted third party such as an independent planning commissioner) and ensure consent conditions are met. It is usual practice where a council is performing both roles to ensure decision-making on the consent applications is delegated to one or more independent planning commissioners.

Affected groups	Comment	Impact	Evidence Certainty
	<i>High evidence certainty, as re-categorisation of properties is a priority in the recovery plan</i>	Non-monetised impacts: - Cost: low, medium, high - Benefit: low, medium, high - No impact	High, medium, or low
Developers	Consent conditions would be similar, whichever pathway (OIC or standard RMA) is used. Although previous fast track processes have been more costly for developers, the benefits of early decisions and more certainty of approval may outweigh these costs.  <i>Medium evidence certainty. More certainty once the OIC is used.</i>	Low/medium (one-off)	Medium
<b><u>Regulators</u></b>			
Councils	The costs of councils' 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 steps with a simplified process inviting specified persons to provide written comments and without a requirement to convene a hearing. The OIC also removes RMA appeal rights which otherwise are a significant cost with major infrastructure projects.  <i>High evidence certainty, as the OIC gives a specific role to councils as regulators.</i>	High (one-off)	High
Central govt	The OIC has no role for central government and no ability to object to the consents, therefore no costs to the EPA or the Environment Court (as might be the case for the RMA consenting pathway). For both pathways, the flood works may also require multiple permits and	Medium (one-off)	High

Affected groups	Comment	Impact	Evidence Certainty
	<p>authorisations under non-RMA legislation that is administered by the Department of Conservation (DOC), and Heritage New Zealand Pouhere Taonga (HNZ)<sup>26</sup>.</p> <p><i>High evidence certainty, as the OIC is specific on the ability to object.</i></p>	<p><i>Non-monetised impacts:</i></p> <ul style="list-style-type: none"> <li>- <i>Cost: low, medium, high</i></li> <li>- <i>Benefit: low, medium, high</i></li> <li>- <i>No impact</i></li> </ul>	<p><i>High, medium, or low</i></p>
<p><b><u>Others</u></b></p> <p>Residents in affected houses</p>	<p>The OIC pathway will allow residents to benefit from the flood works earlier:</p> <ul style="list-style-type: none"> <li>- less time paying for temporary housing (eg, rent payments on top of paying for an existing mortgage), as residents will be able to move to permanent housing in areas that are flood protected</li> <li>- Category 1 (low risk) properties can be repaired earlier</li> <li>- costs of permanent housing will be lower the sooner the flood works are done, as the cost of labour and materials may rise over time.</li> </ul> <p><i>Medium evidence certainty. Although permanent accommodation cannot be built on the affected land without the flood works, other variables eg, availability of loans and speed of developing community services will affect how much is built, and when, once the flood works are complete.</i></p>	<p>High (ongoing)</p>	<p>Medium</p>

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<sup>26</sup> This assessment only addresses the RMA related aspects of the proposed Order. If modifications to other legislation are required, the relevant government departments will carry out all the required policy work including Treaty and settlement assessments.

Affected groups	Comment	Impact	Evidence Certainty
Residents, including iwi/hapū/Māori, who may not be in favour of the consents or the conditions on consents	<p>As there is no capacity to object under the OIC, people who may otherwise have objected to consents will not pay the costs of engaging lawyers to draft submissions and attend hearings etc. However, these cost benefits are not positive because people who might have paid would value the opportunity to object higher than the costs of going through such a process.</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 eg, on costs of the flood works, design, environment, or the willingness of people to stay in the area.</p> <p><i>High evidence certainty for removal of costs of objection, as there will be no ability to object.</i></p> <p><i>Medium evidence certainty for longer-term impacts of that removal.</i></p>	<p><i>Non-monetised impacts:</i></p> <ul style="list-style-type: none"> <li>- Cost: low, medium, high</li> <li>- Benefit: low, medium, high</li> <li>- No impact</li> </ul> <p>High (potentially ongoing)</p>	<p>High, medium, or low</p> <p>High/Medium</p>
iwi/hapū/Māori: landowners	<p>The OIC does not include any modifications to the Public Works Act 1981 (PWA) so any land takings would follow standard procedures and timelines. The proposal to bypass usual consenting processes will be unlikely to have implications for rights under the Marine and Coastal Area (Takutai Moana) Act 2011.</p> <p><i>Medium evidence certainty. The implications of bypassing the usual consenting processes are assumed but may only become apparent when it happens.</i></p>	<p>No impact</p>	
iwi/ hapū/Māori: households	<p>The OIC will enable Māori households, who were affected by the flooding, to move earlier into permanent accommodation. Communities will be re-built earlier eg, with</p>	<p>High (ongoing)</p>	

Affected groups	Comment	Impact	Evidence Certainty
	<p>jobs and schools, and rebuilding of Marae and other cultural infrastructure can be done earlier.</p> <p><i>High evidence certainty. Māori households were disproportionately affected by the flooding hence they will have high demand for permanent accommodation as soon as it is available (if the accommodation is appropriate in terms of price, location etc).</i></p>	<p><i>Non-monetised impacts:</i></p> <ul style="list-style-type: none"> <li>- Cost: low, medium, high</li> <li>- Benefit: low, medium, high</li> <li>- No impact</li> </ul>	<p><i>High, medium, or low</i></p>
<p>Residents, including iwi/hapū/Māori, who are not able to object or appeal the consents</p>	<p>As there is no capacity to object or lodge RMA appeals under the OIC<sup>27</sup>, people who would otherwise have objected or appealed under the standard RMA consent pathway will not receive the benefits that might have resulted from their objections to consents. In most cases these benefits (financial or other gains, or the avoidance of loss) would outweigh savings related to losing the ability to object (eg, not engaging lawyers to draft submissions and attend hearings etc.).</p> <p>As the ability to object or appeal the consents may have the benefit of ensuring that consents and consent conditions are subject to a more complete and wider analysis, removing that ability may have longer-term negative impacts. These impacts may include, for example, the effects on communities and the environment that arise from the design of the flood works.</p>	<p>High (potentially ongoing)</p>	<p>High/Medium</p>

<sup>27</sup> Anyone who is invited to make written comments on an application may not appeal against the consent authority's decision on the application (under Part 6 of the RMA), and there can be no objection to the decision under Part 14 of the RMA..

Affected groups	Comment	Impact	Evidence Certainty
		<i>Non-monetised impacts:</i> - Cost: low, medium, high - Benefit: low, medium, high - No impact	High, medium, or low
	<p><i>High evidence certainty for no costs of objection, as the OIC removes the ability to object.</i></p> <p><i>Medium evidence certainty for longer-term impacts of removal of that ability.</i></p> <p>The flood works are a key element in the region’s recovery and resilience to future severe weather events; they are identified in the recovery plan as critical for protecting communities and restoring the resilience of the environment and infrastructure.</p>		
Workers	<p>The region has a severe shortage of skilled civil infrastructure workers. Bringing the flood works forward will mean less time to build the skilled workforce, therefore workers may need to be brought in from other regions.</p> <p><i>High evidence certainty, as skills shortages are a known problem in the region.</i></p> <p>On the other hand, starting the flood works early will provide an earlier opportunity to begin building a skilled workforce that can be used for other infrastructure needs relating to the recovery. This may be a particular focus for the region’s Māori and Pasifika communities<sup>28</sup>. The OIC will enable investment in these development opportunities to start earlier and will be an incentive for people to remain in the area. It may catalyse further work-related investment in the region eg, tertiary education.</p>	<p>High (ongoing)</p> <p>Medium</p>	Medium

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<sup>28</sup> Hawke’s Bay Briefing to the Incoming Government, November 2023: [HB-BIM-Final-29-Nov-23.pdf \(hawkesbayrecovery.nz\)](#)



Affected groups	Comment	Impact	Evidence Certainty
	<p><i>Medium evidence certainty. Future positive impacts depend on the willingness and ability of the civil infrastructure industry to train however this has previously been normal practice for similar large-scale works. Noting also that two of the top recovery priorities for HBRC, as described in the recovery plan (p.10), are:</i></p> <ul style="list-style-type: none"> <li>- <i>Support economic recovery by investing in capability support, assistance and infrastructure that creates a platform for economic growth and regional prosperity</i></li> <li>- <i>Utilise a progressive procurement approach and local businesses, labour, skills and experience to undertake regional recovery where possible, and identify and fill any regional labour, skills and experience gaps where needed.</i></li> </ul>	<p><i>Non-monetised impacts:</i></p> <ul style="list-style-type: none"> <li>- <i>Cost: low, medium, high</i></li> <li>- <i>Benefit: low, medium, high</i></li> <li>- <i>No impact</i></li> </ul>	<p><i>High, medium, or low</i></p>
Rural communities, farmers	<p>If the OIC enables the flood works to be completed earlier than would be possible if consents were obtained under the standard RMA pathway, farmers and rural communities will benefit from earlier recovery. For example - opening roads, restoring land to farming, better access, fewer animal welfare concerns, and higher farmgate prices.</p> <p><i>High evidence certainty (indicated throughout the recovery plan)</i></p>	High (ongoing)	High
<b>Total costs</b>	<b>Lack of ability to object or appeal under the RMA</b>	<b>High</b>	
<b>Total benefits</b>	<b>Recovery would be faster than RMA standard pathway by one year.</b>	<b>High</b>	

Affected groups	Comment	Impact	Evidence Certainty
	<p><b>Approx 975 properties sitting in Category 2A or Category 2C will be re-categorised as Category 1, supporting wider community benefits and regional economic and social recovery.</b></p>	<p><i>Non-monetised impacts:</i>  - Cost: <i>low, medium, high</i>  - Benefit: <i>low, medium, high</i>  - No impact</p>	<p><i>High, medium, or low</i></p>

## **Total costs and benefits**

In the summary table above, it is apparent that the benefits of the OIC would outweigh the costs. This is because:

- The OIC will allow the flood works to begin earlier than if the standard RMA consenting pathway were used. This earlier commencement means that the benefits of the flood works will be felt earlier by people across the region. As indicated in the recovery plan (p.56), flood protections are a recovery priority because they are 'a precondition for many recovery activities', meaning that many recovery activities will follow as soon as they are completed.
- The benefits of an earlier recovery, following the completion of the flood works, outweigh the main cost of using the OIC - namely the lack of ability to object or appeal the consents. Furthermore, as the works are classified as controlled activities, there is limited scope to appeal the consents as the consents must be granted. This limits the scope to either amending the conditions of consent or adding additional conditions.

## Section 3: Delivering an option

### How will the new arrangements be implemented?

#### Timing of implementation

38. The OIC's modification to the RMA is proposed to last for the maximum period under the SWERLA, namely to 31 March 2028. This will enable the flood works to be consented and constructed within the term of the SWERLA. For the majority of the flood works this period gives sufficient time for effecting the consents that are granted under this OIC.
39. Four of the flood works<sup>29</sup> require resource consents by late 2024 to ensure they can start in the next available construction season (October 2024 – April 2025) with construction timeframes of 1-3 years. The remainder of the flood works<sup>30</sup> will also be consented and constructed within the term of the SWERLA. However, completion of the largest and most complex project (Wairoa) may extend past 31 March 2028 (works are currently programmed to end on 1 July 2028).
40. In all cases the resource consents will enable substantial progress to be made before the expiry of the SWERLA. After that, the duration of the consents granted under this OIC will extend beyond the expiry in accordance with the RMA, with future consents granted by the Hawke's Bay local authorities under the regional and district plans and relevant National Environmental Standards.
41. The OIC has no retrospective effect. The flood works are currently at the preliminary engineering design stage and consent applications for the first tranche of locations will be lodged in mid-2024 after the OIC is gazetted. As the OIC includes a bespoke and shortened consenting process (including significant amendments to the RMA's public notification and submission processes), it is impractical for lodgement and consent processing to be done before the OIC comes into effect.

#### Risks and mitigation

In the table below we have indicated the potential risks of the OIC, and how the OIC's provisions mitigate the risks.

Risk	Mitigation
The modifications made by the OIC may affect activities other than the flood works	The modifications only apply to flood works activities carried out in 8 location by the Hawke's Bay local authorities and are directly related to the impacts of Cyclone Gabrielle and do not apply to BAU or new works that falls outside the scope of section 8(1) of the Act.
Adverse environmental effects may not be appropriately managed	There is a consistent set of conditions that can be imposed on all resource consents required by the flood works. This provides certainty to the Hawke's Bay local authorities, the Ministry for the Environment, iwi/ hapū/Māori, local communities, landowners and other parties, that adverse environmental effects are to be appropriately managed. The consent conditions place a compliance obligation on the HBRC (as consent holder) and can be monitored and enforced by local authority (eg, by the HBRC or

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<sup>29</sup> Awatoto, Waiohiki, Pakowhai, Ohiti Road (Omahu), and Whirinaki

<sup>30</sup> Wairoa, Havelock North, and Porangahau

Risk	Mitigation
	the relevant territorial authority performing their functions, duties and powers under the RMA <sup>31</sup> ).
Information may not be shared, and there may be little engagement on the flood works	The proposed conditions of consent include requirements for the consent holder to engage with local authorities, affected parties and relevant Māori entities <sup>32</sup> by seeking written comments on the consent applications as well as on an on-going basis through to the completion of the flood works. This is to ensure information is shared, feedback is sought, and that appropriate processes are in place to support the intention of the current RMA framework for public participation albeit in a modified way.
People may want to make appeals to the Environment Court or High Court regarding consents issued under the OIC	Decisions made under the OIC can be judicially reviewed.

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<sup>31</sup> Local authorities across New Zealand hold significant public assets and frequently undertake development and construction works that require resource consents. It is commonplace for local authorities to both apply for resource consents, and process and determine them. In such cases, as a matter of good practice, independent commissioners are usually engaged to hear and determine the applications.

<sup>32</sup> MfE proposes to use the term 'Māori entity' as defined in section 9 of the Urban Development Act 2020. The term is also used for the same purposes in clause 9 of the Waka Kotahi order.

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

### Monitoring and evaluation

42. Monitoring and evaluation of the flood works and their impact will be undertaken by the Hawke's Bay Regional Recovery Agency which has the role of assuring funders that activities are undertaken and successfully implemented in line with expectations.
43. Conditions placed on the resource consents will be monitored by HBRC's Compliance Team, in accordance with MfE best practice guidelines<sup>33</sup>. The Compliance Team monitors resource consents, checks activities comply with regional plan rules, and uses enforcement tools when conditions are breached. The process of compliance monitoring involves carrying out inspections and using compliance approaches to promote behaviour change and incorporate best practice<sup>34</sup>.

### Reviews of the OIC

44. The OIC requires that the OIC be reviewed one year after enactment. This review will be undertaken by MfE as part of MfE's regular 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.
45. The regular reviews are required under Section 12 of the SWERLA, which obliges the relevant Minister to decide whether to 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 1135 of the Act
  - the order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990.
46. 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.
  - MfE analyses the feedback and data received from stakeholders and Treaty partners. The draft options and recommendations for the Minister are

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<sup>33</sup> [Best practice guidelines for compliance, monitoring and enforcement under the Resource Management Act 1991 | Ministry for the Environment](#)

<sup>34</sup> [Regulation & Compliance | Hawke's Bay Regional Council \(hbrc.govt.nz\)](#)

<sup>35</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.

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, we 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.

47. When the new fast-track legislation is in place, a focus of review will be whether the OIC continues to be necessary or whether (if the fast-track legislation is able to achieve the same outcomes) it is no longer needed.

## Appendix 1: Alternative current pathways for obtaining resource consents for the flood works

Pathway	Why it is not appropriate for the flood works
The Government has retained the fast-track pathway for obtaining consents under the RMA 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.	Would not ensure that four of the eight flood works locations are consented in time for construction to commence in late 2024.
Direct referral to the Environment Court	Would not ensure that four of the eight flood works locations are consented in time for construction to commence in late 2024. Also not viable as multiple interests in the flood works make them unwieldy and difficult for the Environment Court to progress.
Proposals of National Significance	Would not ensure that four of the eight flood works locations are consented in time for construction to commence in late 2024. The appeal pathway is also a risk to the timing and completion of the flood works.
RMA Notices of requirement for new designations	Not viable as an alternative consenting pathway, but notices of requirement could be sought later to ensure the completed works are protected from neighbouring land use changes..
RMA Plan Change using standard Schedule 1 process to amend regional and district plans	Requires a two-step process, with potential appeals, therefore would not ensure that four of the eight flood works locations are consented in time for construction to commence in late 2024.
RMA Plan Change using the Streamlined Planning Process to amend regional and district plans	Requires a two-step process therefore would not ensure that four of the eight flood works locations are consented in time for construction to commence in late 2024.



## Appendix 2: Support expressed during engagement for the OIC

Sector	Name of business/group	Support/ concerns expressed during engagement
<b>Councils</b>	Hawke's Bay Regional Council	Supports the flood works and the OIC. Notes consent conditions should be tailored for each design and location
	Wairoa District Council	Supports the flood works and the OIC. Asked about the status of National Policy Statements in the OIC
<b>Crown agencies</b>	Ministry for Primary Industries	Supports the OIC including processing each resource consent as controlled activities
	Te Tumu Paeroa – Office of the Māori Trustee*	Broadly supports the general intent of the OIC but says it should ensure Māori Trustee and landowners will be notified and able to comment on consent applications
	Land Information New Zealand, New Zealand Transport Agency /Waka Kotahi, Te Puni Kōkiri, Heritage NZ	Consulted but no feedback
<b>Community groups/NGOs</b>	Forest and Bird	Concerns about having hard engineering rather than nature- based flood works
	Between Two Rivers	Concerns about the lack of information available and engagement on the flood works, and short consultation timeframes on the OIC
	Water NZ	Supports the flood works and the OIC. Recommends that consent conditions take natural hazard risks into account
	Matariki (a collaborative leadership group made up of the 5 Hawke's Bay councils, iwi, and 6 PSGEs)	Supports the OIC as providing regulatory relief avoiding lengthy consenting and appeal processes
	TAG Marketing (rural marketing specialists)	Concerns relating to involvement of affected groups, and consultation timeframes on the OIC and flood works  NOTE: A stakeholder advisory group clause was included in the OIC to help inform design, management, monitoring of construction works
<b>Business/industry</b>	Awatoto Industry Action Group (AIAG)	
	WoolWorks NZ Ltd (part of AIAG)	Support the flood works and the OIC
	SBT Group (part of AIAG)	
	Pan Pac Forest Products Ltd	Concerns about design of the flood works
<b>Post Settlement Governance Entities (PSGEs)</b>	Tamatea Pōkai Whenua (Heretaunga Tamatea)	Generally supportive of the flood works and the OIC
	Ngati Pahauwera Development Trust	Concerns about the locations of the flood works which could have negative impacts on already disadvantaged communities Supports the flood works and the OIC
	Mana Ahuriri	
	Maungaharuru-Tangitū Trust	Concerns about location of the flood works,
<b>Marae</b>	Petane Marae	Supports overall intent of the OIC but has concerns eg, impact of the flood works and ensuring adequate consultation.
	Ruataniwha Marae	Supports overall intent of the OIC but notes that flood protection needs to be in place to ensure communities are safe from future severe weather events. Concerns expressed in the in-person hui were mainly about the locations of the flood works.
	Te Rākatō Marae and Ngāi Te Rākatō	Support overall intent of the OIC but concerned about the specificity of the flood works.



**Appendix 3 – Overview of feedback received from public engagement**

## Written Feedback

#	Consulted party	Feedback received	Potential treatment of feedback <i>(Feedback treatment listed by para. Number in feedback received column)</i>
1.	Heritage New Zealand (HNZ)  Written feedback received 29 February 2024 (email)	HNZ requested that some amendments be made to the approach to the cultural heritage and archaeology conditions in the Waka Kotahi OIC. The amendments requested were because HNZ considers the approach to be unnecessarily onerous and costly.	<p><b>Response:</b> Officials agree that carrying over the cultural heritage and archaeology conditions from the Waka Kotahi OIC will result in costly and onerous processes.</p> <p>Much of the cost relates to the Waka Kotahi conditions duplicating processes required for obtaining an archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA).</p> <p>To address HNZ’s concerns, officials propose to limit the scope of the resource conditions to setting out an accidental discovery protocol. This condition will not apply where an authority is granted under the HNZPTA.</p> <p>Officials also note the Hawke’s Bay regional Council is currently undertaking desktop archeological assessments and seeking cultural values assessments (CVA) for each of the locations where flood works will occur.</p> <p><b>Policy recommendation:</b> Officials recommend the inclusion of a consent condition in the Schedule setting out an accidental discovery protocol. This will only apply where an archaeological authority under the HNZPTA has not been granted.</p>
2.	WoolWorks New Zealand Limited  Written feedback received 11 March 2024 (email)	<p><b>Comments:</b> WoolWorks supports the proposed Order (WoolWorks is located at the Awatoto site).</p>	<p><b>Response:</b> Noted.</p> <p><b>Policy recommendation:</b> No change.</p>
3.	SBT Group  Written feedback received on 13	<p><b>Comments:</b> SBT Group has two companies located in the Awatoto Industrial Area and supports the proposed OIC. The streamlining of the consenting process and speeding up of recovery works brings</p>	<p><b>Response:</b> Noted.</p> <p><b>Policy recommendation:</b> No change.</p>

#	Consulted party	Feedback received	Potential treatment of feedback ( <i>Feedback treatment listed by para. Number in feedback received column</i> )
	March 2024 (email)	security and certainty to both the companies located in the industrial area and their employees, along with insurance relief.	
4.	Hawke's Bay Regional Council  Written feedback received on 18 March 2024 (email)	<p><b>Comments:</b> Hawke's Bay Regional Council (HBRC) strongly supports the proposed OIC. It will assist in streamlining the consenting process for crucial flood works. Tailoring consent conditions for each flood works design and location is essential to ensure all adverse effects of the proposed flood works are appropriately avoided, remedied or mitigated.</p> <p>Proposed OIC consent conditions need to be coherent, implementable for the consent holder, and measurable and enforceable by the consent authority.</p> <p>Neutral on proposed recommendation to appoint a panel to consider each consent application. HBRC has capability, separation and delegations in place to decide on the applications individually or jointly with the City or District councils. HBRC has experience in dealing with joint decision-making processes with other councils and in separation of HBRC's Consent Authority role and as an applicant.</p>	<p><b>Response:</b> Officials worked with the HBRC to develop draft conditions and ensure they are relevant and implementable for the local context. The conditions recommended for inclusion in this OIC have been reviewed by the HBRC and other councils in terms of their roles as applicant and consent authority (including their compliance, monitoring and enforcement functions under the RMA).</p> <p>Officials agree with HBRC that it has existing processes in place to appoint independent commissioners to determine the consent applications. This is common practice for major infrastructure projects undertaken by local authorities. Officials consider this approach addresses any perception of bias or potential conflict of interest as to the HBRC or other councils acting as both the applicant and consent authority.</p> <p><b>Policy recommendation:</b> No change.</p>
5.	<p>s9(2)(a)</p> <p>Written feedback received on 17 March 2024 (email)</p>	<p><b>Comments:</b> Concerned that the Porangahau community has not been adequately consulted with on flood work proposals.</p> <p>Community has raised need for stop banks in the past but notes it may not be a one size fits all approach.</p> <p>Concerned that proposed stop banks will result in more extensive damage in a future flood event than if there were no stop banks.</p> <p>Proposes a more comprehensive plan that includes safety nets for wider community discussions around the flood work</p>	<p><b>Response:</b> 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.</p> <p>Cabinet agreed (21 February 2024) to extend the timeframe for statutory engagement from 3 working days as required by SWERLA, to three weeks. We consider the additional time is sufficient, given the need to progress this proposal with urgency. Officials also note the proposed OIC includes two further engagement processes as part of the resource consent process for the flood works.</p>

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		<p>proposals to ensure that all potential impacts are considered, and best solutions are implemented.</p> <p>Requests that the submission deadline be extended to allow for more community members to review and provide feedback on the proposed OIC.</p>	<p>First, the proposed OIC makes provision for written comments to be sought when a resource consent is lodged. The consent authority is required to notify a specified list of persons including all relevant Māori entities, councils, Crown agencies, network utility operators and adjacent landowners or occupiers, as well as any other person the consent authority considers appropriate.</p> <p>Second, the proposed OIC includes a schedule of resource consent conditions and one of the consent conditions requires the consent holder to establish a stakeholder liaison group. The purpose of this group is to provide a forum to address project-specific concerns and issues, as well as provide feedback on the consent holder’s construction and environmental management plans.</p> <p><b>Policy recommendation:</b> No change.</p>
6.	<p>Te Tumu Paeroa – Office of the Māori Trustee</p> <p>Written feedback received on 15 March 2024 (email)</p>	<p><b>Comments:</b></p> <p>Te Tumu Paeroa (TTP) broadly supports the general intent of the proposed OIC to streamline resource consent processes but has two main concerns.</p> <p>Concerned about the ability to provide feedback and undertake analysis of the OIC’s potential impacts on Māori freehold land is limited when they have not seen the draft OIC.</p> <p>Concerned with the proposed mitigation works which are likely to have an impact on their portfolio. Concerned that the proposed OIC will be inadequate in ensuring that Māori Trustee will be notified and have an opportunity to comment on consent applications under the proposed OIC.</p> <p>Concerned that the Waka Kotahi OIC is not a good drafting model, in particular drafting under section 9 of that OIC with the notification provisions. Specifically, “a relevant Māori entity”</p>	<p><b>Response:</b></p> <p>Officials note TTP’s concerns mainly relate to the implementation of the OIC, when flood works design and construction is progressed.</p> <p>Officials consider that “relevant Māori entity” is the appropriate drafting approach as it includes PSGEs and iwi/ hapū/ Māori in the Hawkes Bay region. Officials consider it would be impracticable to list specific entities and could also risk leaving some impacted entities out. The term ‘Māori entity’ is a defined term in the Waka Kotahi OIC. It has the meaning given by section 9 of the Urban Development Act 2020 (UDA) and includes the entities referenced by TTP.</p> <p>Officials acknowledge TTP’s concerns regarding the wording in the Waka Kotahi Order and consider this can be readily addressed by ensuring the definition applies to ‘all’ Māori entities (rather than ‘a’ Māori entity).</p> <p>To ensure its workability, officials are engaging with HBRC to confirm that they have the contact details of the relevant Māori entities.</p>

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		<p>does not make an obligation to notify the Māori Trustee or all potentially impacted Māori entities.</p> <p>Concerns with notification of landowners and note that flood mitigation works are likely to have both upstream and downstream effects. Also recommend the consent authority put in place a process to appropriately identify landowners through checking publicly available records of title.</p>	<p>Officials also note the proposed OIC enables HBRC and other consent authorities to notify other person/s, if they consider that the person has an interest in the application that is greater than the interests of the general public.</p> <p><b>Policy recommendation:</b> Officials recommend that the Māori entity representative/s condition includes ‘all relevant Māori entities’, with ‘Māori entities’ defined in the OIC as having the meaning given by section 9 of the UDA.</p>
7.	<p>Te Puni Kōkiri</p> <p>Written feedback received on 15 March 2024 (email)</p>	<p><b>Comments:</b> Te Puni Kōkiri (TPK) considers iwi, hapū and Māori may need additional support due to the short consultation timeframes to ensure their participation and understanding of the quick regulatory changes.</p> <p>TPK considers it useful to have additional information regarding the alternative options considered in developing the proposed OIC.</p> <p>Some of the proposed flood works will have a significant impact on the whenua and surroundings. It is important to ensure that all affected communities are engaged with on the proposals beyond a public notice.</p>	<p><b>Response:</b> Officials do not recommend wide sharing of the Parliamentary Counsel Office (PCO) drafting, other than with the entities approved through a limited waiver application to release the draft OIC to a small, pre-determined group on an in-confidence basis and subject to legal privilege. The requirement in SWERLA is to consult on the policy proposal. Consulting widely on the draft wording is not considered practicable given the geographic scope of the proposal and the urgency of progressing it as a 100-day action. Only the Hawke’s Bay Regional Recovery Agency and the relevant consenting authorities are being consulted on the specific structure and wording of the draft OIC. This is to ensure the OIC’s workability on the ground. They are also in a position to consider the draft wording at pace, given the need to introduce the OIC as a matter of urgency. It is also unlikely to resolve any concerns parties may have with the design or location of the flood works as the proposed OIC only establishes a streamlined consenting process for these works.</p> <p>As noted above in row 5, the proposed OIC will have two further engagement processes as part of the resource consent process for the flood works.</p> <p><b>Policy recommendation:</b> No change.</p>

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8.	<p>Tamatea Pōkai Whenua (Heretaunga Tamatea post-settlement governance entity)</p> <p>Written feedback received on 18 March 2024 (email)</p>	<p><b>Questions:</b> Who will be part of the Severe Weather Recovery Review Panel (Review Panel), and will they bring an understanding of Heretaunga Tamatea to their role? TPW considers that for the proposed OIC to be able to provide equity and cooperation between all communities, they must be able to directly provide comments on the proposed OIC.</p> <p><b>Comments:</b> Tamatea Pōkai Whenua (TPW) is generally supportive of initiatives to assist with the recovery in the Heretaunga Tamatea takiwā following Cyclone Gabrielle. TPW is concerned about the lack of opportunity to comment on the content of the draft OIC, including:</p> <ol style="list-style-type: none"> <li>a. what input will TPW have into appointment of the independent hearing panel that will process the resource consents (especially with limited appeal rights),</li> <li>b. the limited appeal rights following a decision on the consent,</li> <li>c. whether TPW and their constituent marae and hapū be affected parties that are consulted with in the absence of public notification,</li> <li>d. given TPW Treaty settlement primarily anticipates engagement – what is the role of TPW in the development of planning documents for the proposed flood works (e.g. cultural value reports, a role in the decision-making panel etc.),</li> <li>e. will TPW and constituent marae and hapū be affected parties that are consulted with in the absence of public notification.</li> </ol> <p>TPW is interested in seeing the detailed wording of the draft OIC to ensure that it provides appropriate opportunity for engagement by TPW, and their marae and hapū, and protects the nature and intent of their Treaty of Waitangi settlement.</p>	<p><b>Response:</b> The Severe Weather Events Recovery Review Panel, established by SWERLA, will operate in division, depending on the nature of the proposed OIC. The Convenor will have the responsibility for determining the appointment to any division of the panel, taking into account the relevant skills, experience and knowledge of members and the matters subject to the proposed OIC.</p> <p>Further to our response above in row 4, officials do not consider the OIC should amend any of the RMA provisions relating to decision-making on consents. Officials consider HBRC’s current approach regarding the appointment of independent planning commissioners is sufficient to ensure robust independent decision-making and address Matariki’s preferred approach to commissioner skills and expertise (refer Matariki and HBRC’s feedback in rows 4 and 20).</p> <p><b>Policy recommendation:</b> No change.</p>



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		<p>TPW have significant concerns at how engagement with Māori, the status of Te Tiriti, and the nature of Treaty settlements are being framed in other initiatives.</p> <p>Concerned with this OIC being modelled on the processes set out in previous OIC and are wary of limited notification of resource consents and certain activities being permitted despite existing restrictions in planning documents.</p>	
9.	<p>Ngati Pahauwera Development Trust <span style="background-color: #cccccc; color: #000000;">[REDACTED]</span> s9(2)(a)</p> <p>Written feedback received on 15 March 2024 (email)</p>	<p><b>Comments:</b></p> <p>Ngati Pahauwera Development Trust (NPDT) considers that the selective community workstreams identified in temporary law change prejudicially affects and disadvantage community groups that were equally or worst affected by Cyclone Gabrielle and have been left out for intended emergency support by HBRC.</p> <p>NPDT considers that Category 3 properties should not be compromised by being excluded from the proposed flood work locations as doing so would be seen as a breach of the Human Rights Act.</p> <p>NPDT requests that <i>'legislation to be amended so that emergency assistance should cover all whānau impacted'</i>.</p> <p>NPDT considers that consultation and engagement materials should be published in places other than newspapers and where information technology is required, so that all whānau have an opportunity to submit feedback.</p>	<p><b>Response:</b></p> <p>The HBRC has identified 8 locations across the Hawke's Bay region that require the construction of new flood works. The flood works in 7 of the locations are intended to reduce the level of risk to Category 2A and 2C residential land to the extent that these land areas can be reclassified as Category 1. The remaining location is Awatoto, where the flood works will protect Napier's wastewater treatment facility and adjoining industrial area.</p> <p>The HBRC has not extended the scope of the proposed flood works to include Category 3 land as the future severe weather event risk to this land cannot sufficiently be mitigated by such works. While some current land uses remain acceptable on Category 3 land, for others, including residential uses, there is an intolerable risk of injury or death.</p> <p>Cabinet agreed on 21 Feb to the 8 locations covered. Officials do not recommend any change to the 8 locations to be covered by the proposed OIC as these have been identified as priority locations for flood works by the HBRC and other councils in Hawke's Bay. Officials note the OIC will not predetermine detailed engineering design considerations at each location.</p> <p>Officials also acknowledge the Trust's comments regarding opportunities for feedback and note the statutory engagement process included two in person hui in Napier and Wairoa.</p> <p><b>Policy recommendation:</b> No change.</p>

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10.	Forest and Bird Written feedback received on 15 March 2024 (email)	<p><b>Comments:</b></p> <p>Forest and Bird considers that nature-based climate solutions such as the Room for Rivers concept will reduce the impacts of future severe weather events.</p> <p>Suggests working with processes that create and rework river channel and its floodplain will reduce the impacts of future disasters.</p> <p>Considers that hard-engineering will only provide temporary relief for communities. They are concerned that hard-engineering solutions means an increase in houses being built in high-risk areas.</p> <p>Acknowledge that providing more room for rivers to flood safely is a difficult issue to address because the long-term solution will likely be retreating from the river edges. However, considers that ‘buying back’ flood plains will be a more cost-effective long-term solution than the maintenance of hard-engineering.</p>	<p><b>Response:</b></p> <p>Officials acknowledge nature-based or other solutions such as retreating from the river edges can reduce the impacts of future severe weather events but note these will need to occur within the scope of the flood works enabled under this OIC. The proposed flood works are addressing the impacts of Cyclone Gabrielle and for 7 of the 8 locations seek to ensure that Category 2A and 2C land can be made safe again for residents. Officials reiterate that the proposed OIC does not predetermine how the flood works are designed to achieve this objective.</p> <p>Officials also note the proposed National Policy Statement for Natural Hazard Decision-making 2023 aims to direct how decision-makers consider natural hazard risk – including the issue of further houses being built in high-risk areas.</p> <p><b>Policy recommendation:</b> No change.</p>
11.	s9(2)(a) Written feedback received on 18 March 2024 (email)	<p><b>Comments:</b></p> <p>First attended engagement meeting in February 2024 where they expressed concerns.</p> <p>Believes the Whirinaki proposal does not protect status of Whenua Māori.</p> <p>s9(2)(a) strongly considers that HBRC has not taken into consideration the adverse effects the proposed Whirinaki project will have on their whenua Māori and loved ones.</p> <p>s9(2)(a) proposes that a Tangata Whenua Māori landowners’ representative(s) needs to be part of the HBRC project team.</p> <p>Concerned about the lack of engagement with HBRC.</p>	<p><b>Response:</b></p> <p>Officials note the HBRC will lead further engagement with affected parties including all relevant Māori entities on the flood works proposed for each of the 8 locations.</p> <p>As outlined above in our responses in row 5, the proposed OIC will have two further engagement processes as part of the resource consent process for the flood works (written comments to be sought when a resource consent is lodged and consent conditions requiring the formation of a stakeholder liaison group).</p> <p><b>Policy recommendation:</b> No change.</p>

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		<p>Concerned about the new stop banks proposed on Pōhutukawa Drive, on Bay View side, and works of a stop bank that is already in progress.</p> <p>Concerned that their whenua Māori and neighbouring Māori landowners will be adversely affected by the proposed Whirinaki flood works.</p>	
12.	<p>Wairoa District Council</p> <p>Written feedback received on 18 March 2024 (email)</p>	<p><b>Questions:</b> Please clarify the status of National Policy Statements (NPS) in the proposed OIC. Particularly in relation to the standing of the National Policy Statement for Highly Productive Land (NPS-HPL), the National Policy Statement for Freshwater Management and the National Policy Statement for Indigenous Biodiversity. Will the proposed OIC override these NPS or will the relevant NPS be considered as part of the flood works resource consent processes?</p> <p><b>Comments:</b> Wairoa District Council (WDC) supports the proposed OIC. WDC requests that the following parties be part of engagement and provide feedback to the Wairoa flood protection consent application(s):</p> <ol style="list-style-type: none"> <li>a. All landowners, businesses and entities impacted by the flood control works,</li> <li>b. All landowners, businesses and entities that will be subject to a higher risk of flooding from the proposed flood works,</li> <li>c. All marae impacted by flood control measures or that will be subject to a higher risk of flooding from the proposed flood works,</li> <li>d. Tātau Tātau o Te Wairoa, and</li> <li>e. Wairoa District Council.</li> </ol>	<p><b>Response:</b> The NPS-HPL provides a pathway for specified infrastructure, including flood works which is currently located on highly productive land areas. However, for clarity and to ensure the new flood works can occur on highly productive land, the proposed OIC takes precedence over any conflicting requirements in national direction.</p> <p>The flood works are proposed in 8 locations across Hawke’s Bay and for this reason, we consider it is impracticable to name specific persons who should be invited to comment on consent applications. Instead, the proposed OIC should require notification of all relevant Māori entities, councils, relevant Ministers, infrastructure providers, and adjacent landowners and occupiers, with a general discretion for the consent authority to notify any other person (see rows 5 and 6 above).</p> <p>The consent conditions in the proposed OIC include a requirement for the consent holder to establish a stakeholder liaison group which would operate for the duration of the construction works. Under this condition the parties listed in WDC’s comments could be invited by the consent holder to join this stakeholder group.</p> <p>Refer to policy recommendation in row 6 (re requirement for the consent authority to contact ‘all’ relevant Māori entities).</p> <p><b>Policy recommendation:</b> No change.</p>

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13.	<p>Water New Zealand</p> <p>Written feedback received on 18 March 2024 (email)</p>	<p><b>Comments:</b></p> <p>Water New Zealand (Water NZ) supports the proposed OIC to help the development of new flood works and associated infrastructure.</p> <p>Water NZ considers the policy intent of the OIC must enable consenting for flood works, but ensure that building or intensifying infrastructure in high hazard risk areas is not desirable.</p> <p>Water NZ recommends that the OIC direct decision-makers to take into account national climate change risk assessment prepared under the Climate Change Response Act 2002 (CCRA).</p> <p>Recommends that consent conditions have regard to natural hazard risk information prepared under the Local Government Official Information and Meetings Amendment Act 2023.</p> <p>Stronger national direction is needed to deter development in high-risk areas – it will result in significant future costs, and potential for significant public and environmental health risks. For example, during Cyclone Gabrielle, Redclyffe substation in Napier flooded, Ravensdown fertilizer factory flooded, and the Awatoto wastewater treatment plant was submerged and bypassed for months.</p> <p>Water NZ recommends that the proposed OIC should recognise, provide for, and protect the ability for lakes, rivers, wetlands and floodplains to remain in their natural state.</p> <p>Recommends that the definition of lifelines and critical infrastructure under the Civil Defence Emergency Management Act 2002 (CDEMA) should include river control and flood protection scheme, including their flow and rain gauge monitoring network.</p>	<p><b>Response:</b></p> <p>Officials acknowledge Water NZ’s request for stronger national direction to manage development in high-risk areas. The Ministry for the Environment has a separate work programme under way on a proposed National Policy Statement for Natural Hazard Decision-making 2023.</p> <p>Officials note Water NZ’s recommendation for the OIC to take into account climate change risk assessment prepared under CCRA and for consent conditions to have regard to hazard risk information held by councils. Officials consider these are matters the HBRC (as consent applicant) could take into account when preparing a flood works consent application as they relate more to the design decisions for the flood works, rather than the conditions of consent which will manage their construction effects and consent engagement and reporting processes.</p> <p>When determining the consent application, the consent authority will assess the proposal against the matters of control in the OIC (including the risk of flooding upstream or downstream of the proposed flood works) before granting consent. In addition to the conditions of consents listed in the OIC officials recommend the consent authority has the power to add further conditions or to amend the existing conditions.</p> <p>Officials note Water NZ’s recommendation that the proposed OIC should recognise, provide for, and protect the ability for lakes, rivers, wetlands and floodplains to remain in their natural state. The proposed matters of control includes provisions that apply an effects management hierarchy to the extent practicable and seeks to achieve a net positive in terms of ecological values while enabling delivery of the flood works.</p> <p>Water NZ’s recommendation regarding definitions in the CDEMA falls outside the scope of this proposed OIC under SWERLA.</p> <p><b>Policy recommendation:</b> No change.</p>

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14.	<p>Between the Two Rivers</p> <p>Written feedback received on 18 March 2024 (email)</p>	<p><b>Comments:</b></p> <p>Concerned about the short timeframes for providing comments on the proposed OIC.</p> <p>Concerned about the OIC process, and lack of information and technical detail provided by HBRC for community confidence about what the proposed OIC will involve.</p> <p>Understands and supports the shorter periods for consultation set by SWERLA but checks and balances for such provisions should be provided to wider community (consent conditions and environmental protection and decision-making process). Concerned about limited consultation undertaken by HBRC with wider community to developing flood protection options.</p> <p>Would prefer that the draft conditions were available for comment.</p> <p>Wants an independent hearing panel appointed to process the resource consents so that it provides credibility to the final decisions on the consents.</p> <p>Expectation for a commitment from councils in the pre-consenting phase to conduct an open analysis and design phases involving wider community across the eight areas.</p>	<p><b>Response:</b></p> <p>Officials acknowledge the tight timeframes for providing feedback. The SWERLA requires a minimum of 3 working days for public consultation on the proposed OIC. This OIC proposal has provided three weeks of public engagement for members of the public to provide written feedback. This was the maximum amount of time officials could provide while balancing the need to progress this proposal with urgency.</p> <p>Refer to row 4 (re independent hearing panel).</p> <p>Refer to row 5 (re future engagement on consent applications and through liaison groups).</p> <p>Refer to row 5 (re OIC not predetermining detailed engineering design).</p> <p>Refer to row 7 (re the sharing of the proposed OIC).</p> <p><b>Policy recommendation:</b></p> <p>No change.</p>
15.	<p>Ruataniwha Marae (s9(2)(a))</p> <p>Written feedback received on 18 March 2024 (email)</p>	<p><b>Comments:</b></p> <p>Ruataniwha Marae acknowledges the need to move with some urgency to provide certainty for flood affected communities such as North Clyde and Wairoa.</p> <p>Ruataniwha Marae supports the overall intent of the proposed OIC but has addressed concerns.</p> <p>Concerned that the constrained timeframes of the proposed OIC engagement period will result in less effective engagement and consultation about this OIC.</p>	<p><b>Response:</b></p> <p>Officials acknowledge Ruataniwha Marae’s support for the intent of the proposed OIC. As above in row 14, officials acknowledge the tight timeframes for providing feedback.</p> <p>The intention of the proposed OIC is to streamline the resource consent process. Retaining public notification, submissions and hearings, and RMA appeal rights will create uncertainty as to whether the flood works can be completed in the minimum time possible.</p>

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		<p>Concerned that any modifications to the Resource Management Act 1991 (RMA) should not diminish protections already in law for tangata whenua and mana whenua to be proactive participants in the RMA processes as the Act intends.</p> <p>Object to the removal of appeal rights – stating that appeal right to the Environment Court is a mechanism to allow a safeguard to disagree with a decision and the opportunity to ‘modify’ or ‘impose conditions’ after a decision is made.</p> <p>Strongly recommend that required conditions before decisions are made are strengthened, and that tangata whenua, mana whenua and marae representatives are active participants in the development of the conditions early and throughout the process, and that they are appropriately remunerated and resourced.</p> <p>Recommend that the proposed OIC conditions must be explicit in requiring that cultural values and cultural impacts are addressed.</p> <p>Strongly recommend that the proposed OIC conditions must include marae representation, and that marae engagement and advice be sought throughout the entire lifespan of any flood works in Wairoa. The representatives must be appropriately remunerated for their expert advice, and appropriate resourcing be made available for the commissioning of expert local cultural mātauranga Māori.</p> <p>Concerned about the process for affected and impacted parties providing written comments as replacement for public notification requirements. Strongly recommend that the consent applicant be required to address any issues or concerns that are raised through written comments.</p>	<p>To address the removal of these public participatory rights, the proposed OIC requires ongoing engagement, including a requirement for the consent authority to seek written comments from all relevant Māori entities when a consent application is lodged.</p> <p>The proposed OIC includes consent conditions requiring further engagement. This includes a requirement for the appointment of Māori entity representatives for the duration of the construction works. The appointed representatives could provide cultural indicators and 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. Refer to row 5 (re future engagement on consent applications and through liaison groups).</p> <p><b>Policy recommendation:</b> No change.</p>
16.	Petane Marae Written feedback received on 18	<p><b>Comments:</b> The notes outlined in the online hui from 12 March 2024 outlines their objection to the proposed OIC.</p>	<p><b>Response:</b></p>

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	March 2024 (email)		<p>Officials have responded to Petane Marae’s feedback in the section below regarding feedback received at the online hui with the Marae (refer rows 39-42).</p> <p><b>Policy recommendation:</b> No change.</p>
17.	Pan Pac Written feedback received on 18 March 2024 (email)	<p><b>Comments:</b> Based on the comments made in the online hui on 13 March (that the OIC will only cover projects seeking to construct flood protection up to 1:100-year level of service), Pan Pac has significant concerns that the Whirinaki flood works will not protect either the industrial sites or residential properties.</p> <p>Pan Pac request that there is no restriction to the level of service of the flood protection and associated infrastructure provided for in the final OIC and/or that a 1 in 100-year level of service is expressed as a minimum level of service.</p> <p>Coastal structures should be included as part of the proposed OIC conditions. Part of the proposed Whirinaki flood works is likely to extend into the coastal environment area. Coastal permits need to be provided expressly for in the proposed OIC.</p> <p>Pan Pac requests that a similar Section 16 – Coastal structures provision (Waka Kotahi) is included in the final OIC.</p> <p>Pan Pac supports the inclusion of a ‘Kaitiaki Advisor’ condition and an ‘Affected Area Recovery Liaison Group’ condition. They consider that the stakeholders they engaged with throughout 2023 are suitable representatives for the Whirinaki area.</p> <p>Pan Pac requests as a scheme landowner, they are included in the Affected Area Recovery Liaison Group for Whirinaki.</p>	<p><b>Response:</b> Officials have been working with the HBRC and other councils to develop conditions of consent for inclusion in the OIC. Officials recommend that the OIC includes a schedule of consent conditions that are applicable to the flood works across all 8 locations, with flexibility in the OIC for the consent authority to add to or amend these conditions.</p> <p>As noted above (refer to row 5), we do not support additional provisions in the OIC which have the effect of predetermining detailed engineering design.</p> <p>With regard to coastal structures, from the engagement to date with the HBRC, officials understand these are not required for the flood works, but coastal permits could still be required for stormwater discharges into the CMA.</p> <p>Officials note Pan Pac’s request to join the stakeholder liaison group for Whirinaki (when formed) and consider this can be addressed at the time HBRC establishes this group.</p> <p><b>Policy recommendation:</b> No change.</p>



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18.	<p>Te Rākatō Marae and Ngāi Te Rākatō</p> <p>Written feedback received on 18 March 2024 (email)</p>	<p><b>Questions:</b> Cyclone Gabrielle had a devastating impact on their whenua, as does every flood – what does ‘severe weather emergency recovery’ constitute?</p> <p><b>Comments:</b> Ngāi Te Rākatō and Te Rākatō Marae are generally supportive of the proposed OIC to speed up cyclone recovery but are concerned about the specificity of the flood resilience works. Considers that the temporary changes of improving resilience or providing for waterway infrastructure is limiting the potential to transform fragile ecosystems such as the Kaiwaitau Isthmus.</p> <p>The historical lack of flood protection has severely impacted their ability to use the land. Request to include Kopuawhara in flood protection planning, given the historical impact of flooding and recent devastation caused by Cyclone Gabrielle.</p> <p>Concerned about the diminishing voice of marae communities such as Te Rākatō Marae and our hapū in decision making.</p> <p>Te Rākatō Marae considers that the proposed OIC could affect Ngāi Te Rākatō, the right to build resilient communities and regenerate their food baskets. The community is 2-4 metres below sea level and have been categorised as ‘red zone’ since 1938. Reasserting that flood protection works for the Kopuawhara Awa and Kaiwaitau is a severe emergency caused by continuous flooding.</p> <p>Concerned about the changes to engagement that the OIC proposes. The proposed changes do not afford them the right to:</p> <ol style="list-style-type: none"> <li>a. Identify the impacts that continuous flooding has on our ecosystems;</li> <li>b. Identify our wahi tapu;</li> <li>c. Generate Cultural Impact Assessments; and</li> <li>d. The full ability to comment on applications.</li> </ol>	<p><b>Response:</b> Severe weather events and affected areas is defined in SWERLA as the severe weather events of early 2023 (including Cyclone Gabrielle) and the districts or regions of the local authorities affected by these events. SWERLA does not apply to preceding or subsequent severe weather events. In the present case the proposed OIC is limited to the consenting of flood works in 8 locations in the Hawke’s Bay, the northernmost of which is works to protect land in the Wairoa township. It does not have a wider application and will not apply to other areas.</p> <p>Officials acknowledge Ngāi Te Rākatō and Te Rākatō Marae’s support for the proposed OIC. As noted above in officials’ responses in rows 5 and 15 the proposed OIC includes two further engagement steps with written comments sought by the consent authority from parties (including all relevant Māori entities) when an application is lodged and the inclusion of consent conditions requiring the consent holder to establish stakeholder liaison groups and the appointment of Māori entities representatives.</p> <p><b>Policy recommendation:</b> No change.</p>



#	Consulted party	Feedback received	Potential treatment of feedback ( <i>Feedback treatment listed by para. Number in feedback received column</i> )
		Requests direct communications to their marae to ensure they are engaged with any work proposed in the above-mentioned areas to ensure the partnership rooted in the RMA is maintained.	
19.	<p>Maungaharuru-Tangitū Trust</p> <p>Written feedback received on 18 March 2024 (email)</p>	<p><b>Comments:</b></p> <p>Maungaharuru-Tangitū Trust's (MTT) interest in the proposed OIC stems largely from the proposed flood works in Whirinaki and the potential impact the flood works will have on wāhi taonga sites including Nukurangi pā and Ararata (Mount Ararat) urupā. MTT wants to ensure that these sites are protected and MTT's views are considered in relation to any proposed stop bank at Whirinaki.</p> <p>MTT wishes to ensure that the location of the wāhi taonga is clear, and that they are not impacted by the works related to the stop bank and that their protection is assured.</p> <p>MTT wishes to be one of the specified persons consulted on any resource consent for works at Whirinaki.</p> <p>MTT has not yet been in discussion with whanaunga from Ngāti Matepū and Petane Marae and states views are 'subject to further discussions'.</p> <p>MTT has particular interest in the proposed stop bank at Whirinaki.</p> <p>MTT does not want to oppose the proposed flood works at the Whirinaki site but wants to ensure that it is designed and placed in a way which does not negatively impact and instead protects Nukurangi pā and Ararata urupā.</p>	<p><b>Response:</b></p> <p>Officials acknowledge Maungaharuru-Tangitū Trust's (MTT) interest in the potential impact the flood works will have on wāhi taonga sites in Whirinaki including Nukurangi pā and Ararata (Mount Ararat) urupā.</p> <p>As noted above, the proposed OIC does not predetermine the detailed engineering design solution for flood works in Whirinaki. Officials understand the HBRC is intending to engage with Māori entities and stakeholders on the design options for flood works in Whirinaki. In addition to this, the proposed OIC includes two further steps to ensure engagement occurs (consent authority to invite Māori entities to provide written comments on the application and requirements to establish stakeholder liaison groups and the appointment of Māori representatives in the conditions of consent).</p> <p>Refer to row 5 (re OIC not predetermining detailed engineering design).</p> <p>Refer to row 15 ( re future engagement on consent applications and through liaison groups including all relevant Māori entities).</p> <p><b>Policy recommendation:</b></p> <p>No change.</p>
20	Matariki (Governance Group)	<p><b>Comments:</b></p> <p>Overall support for the proposed OIC. Regulatory relief is seen as necessary so as to avoid lengthy consenting and appeal</p>	<p><b>Response:</b></p> <p>Officials acknowledge Matariki's support for the proposed OIC.</p> <p>Officials acknowledge Matariki's request that a Māori interests and equity lens is applied in the proposed OIC so that the process and outcomes are</p>

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	<p>Written feedback received on 18 March 2024 (email)</p>	<p>processes for the flood protection works required to protect homes and the proposed OIC responds well to this.</p> <p>Strongly supports iwi and hapū involvement at each stage.</p> <p>Matariki requests that Māori interests and equity lens is applied to the drafting of the proposed OIC so that the process and outcomes are deliberately inclusive.</p> <p>Want to ensure that the Treaty Partners are supported and remunerated for their involvement where appropriate. Particularly during consent development and implementation stages that follow the engagement process. Matariki understands that this is provided for in the stakeholder engagement processes under the Waka Kotahi OIC.</p> <p>Matariki supports the recommendation to have the resource consents under the proposed OIC to be processed by an independent panel of commissioners. Requests that at least one of the accredited commissioners have knowledge and expertise in tikanga Māori and mātauranga Māori, similar to freshwater hearing panel.</p> <p>Matariki recommends that if deemed necessary by the consenting authority, that a commissioner who has strong local knowledge of either the region as a whole or specifically to the project area should be included as part of the panel.</p> <p>Matariki supports there being a schedule of conditions standard to all consents and recommends that the proposed OIC includes the ability for area-specific conditions to be included in the resource consents where necessary.</p>	<p>deliberately inclusive. In response, officials note the proposed OIC includes two further engagement steps (written comments on the consent application and for the consent conditions to include requirements for the appointment of Māori entities representatives and stakeholder liaison groups.</p> <p>A Māori entities representatives condition is proposed to ensure that ongoing engagement with mana whenua is undertaken, and that appropriate cultural steps are taken for each project works. The consent holder must agree a terms of reference with the Māori entity for this role, including expectations regarding the scope of the role, timeframes, support and remuneration. Officials consider these are matters that are more appropriately addressed via direct engagement between the consent holder and the Māori entities than by direction in the OIC itself.</p> <p>In row 4 above, officials acknowledge the HBRC's confirmation that it has existing processes in place to appoint independent commissioners to determine the consent applications. Officials confirm they will convey Matariki's request that at least one of the accredited commissioners have knowledge and expertise in tikanga Māori and mātauranga Māori and/or strong local knowledge, to HBRC.</p> <p>Officials acknowledge Matariki's support for the proposed OIC to include a schedule of conditions. The proposed OIC includes the ability for the consent authority to add to or amend these conditions in order to reflect area-specific circumstances.</p> <p>Refer to row 4 (re HBRC processes to appoint independent planning commissioners)</p> <p>Refer to row 15 (re future engagement on consent applications and through liaison groups including all relevant Māori entities).</p> <p><b>Policy recommendation:</b> No change.</p>

#	Consulted party	Feedback received	Potential treatment of feedback ( <i>Feedback treatment listed by para. Number in feedback received column</i> )
21.	Awatoto Industry Action Group Written feedback received on 20 March 2024 (email)	<b>Comments:</b> Awatoto Industry Action Group supports the OIC process and supports including the Awatoto flood work projects as part of the OIC.	<b>Response:</b> Noted. <b>Policy recommendation:</b> No change.

### In-person Hui – MfE hosted Wairoa Flood Protection Group Hui – 7 March 2024

#	Consulted party	Feedback received	Potential treatment of feedback ( <i>Feedback treatment listed by para. Number in feedback received column</i> )
22.	s9(2)(a) [Redacted]	<b>Comments:</b> None of the areas are going to work – wāhi tapu is in all of these areas. The awa will go where the awa will go.  Tono/Request HBRC to run the proposed flood works options past the community before they are submitted.	<b>Response:</b> Officials do not recommend any change to the 8 locations to be covered by the proposed OIC as these have been identified as priority locations for flood works by the HBRC and other councils in Hawke’s Bay. Officials note that the OIC will not predetermine detailed engineering design considerations at each location.  As noted above in our responses in rows 5 and 15, the proposed OIC includes two further engagement steps with written comments sought by the consent authority from parties (including all relevant Māori entities) when an application is lodged and the inclusion of consent conditions requiring the consent holder to establish stakeholder liaison groups and the appointment of Māori entities representatives.  <b>Policy recommendation:</b> No change.
23.	[Redacted] s9(2)(a) (Local)	<b>Question asked:</b>	<b>Response:</b>

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	community member)	<p>How does the proposed OIC shorten the standard RMA timeframe to ensure that it doesn't take 10 years for the flood works to be completed?</p> <p>When will the works start and finish in Wairoa?</p>	<p>To ensure efficient and timely processes, officials recommend the OIC requires consent decisions to be issued within 30 working days of the date of lodgment. Officials also recommend the overall consenting process is timely and certain by replacing the public notification and submissions process under the RMA with a requirement for the consent authority to notify specified persons and invite written comments from them on the consent application.</p> <p>This timeframe for flood works in Wairoa has been indicated by HBRC – it is expected that the resource consents for the flood works will be lodged mid-2025.</p> <p><b>Policy recommendation:</b> No change.</p>
24.	s9(2)(a) [redacted]	<p><b>Questions asked:</b> Is this proposed OIC for all the project areas? Will there be area specific conditions – Havelock North is very different to Wairoa, could there be specific conditions for Wairoa?</p>	<p><b>Response:</b> Refer to row 5 (re Cabinet agreement on the 8 locations).</p> <p>Officials acknowledge that to address site-specific matters it may be necessary for the consent authority to amend or add to the list of conditions recommended for inclusion in the OIC. On this basis the proposed OIC provides the consent authority with this ability.</p> <p><b>Policy recommendation:</b> No change.</p>
25.	s9(2)(a) [redacted]	<p><b>Questions asked:</b> Once HBRC makes a decision on the site of the project works, the lodged resource consent must be granted as a controlled activity?  Will HBRC make the decision on which site goes forward and get approval?</p>	<p><b>Response:</b> Officials confirm that under the RMA a resource consent for a controlled activity must be approved.</p> <p>The consent authority in most cases will be HBRC acting independently from their other role as asset manager and applicant. There are standard RMA processes to manage this, including using independent planning commissioners to determine the consent applications.</p>

#	Consulted party	Feedback received	Potential treatment of feedback ( <i>Feedback treatment listed by para. Number in feedback received column</i> )
		<p>Where do the NPS and NES sit in this process (e.g. NES-FW, NPS-HPL) – some of the options are on LUC class 1 or 2 land. Can they get overridden in cases of a controlled activity?</p> <p>HBRC is the consent applicant – will the final decision be regulatory or political?</p>	<p>Officials note that the proposed OIC will take precedence over any conflicting requirements in national direction.</p> <p>Refer to row 5 (re OIC not predetermining detailed engineering design) and row 12 (status of OIC with regard to existing RMA national direction).</p> <p><b>Policy recommendation:</b> No change.</p>
26.	<p>s9(2)(a) (Tātau Tātau o Te Wairoa Trust Trustee – s9(2)(a) )</p>	<p><b>Questions asked:</b> How do we stop the proposed OIC if there are no appeal rights? There is no provision for Treaty partnership here with HBRC. We are being engaged again with no right to appeal and having to go to the court. There's a monetary barrier for our people.</p> <p><b>Comments:</b> Tākitimu Marae does not want Option 1C to go ahead. Concerned that if this option goes ahead, we don't have the right to appeal under the proposed OIC. HBRC have set the land categorisation and holds the power. Concerned about the weighting submissions put forward under specific conditions may hold.</p> <p>Asking to see data and mapping behind the flood works options.</p> <p>Doesn't matter what the Tripartite recommends – it can be superseded by HBRC.</p>	<p><b>Response:</b> Refer to row 5 (re future engagement on consent applications and through Māori representative and stakeholder liaison groups). Refer to row 5 (re OIC not predetermining detailed engineering works). Refer to row 15 (re limited appeal rights rationale).</p> <p><b>Policy recommendation:</b> No change.</p>
27.	<p>s9(2)(a) (Tapokorau – s9(2)(a)</p>	<p><b>Questions:</b> Will there be any community engagement on these options?</p> <p><b>Comments:</b> Concerned about the lack of appeal rights in the proposed OIC. Concerned about the cultural impacts the proposed</p>	<p><b>Response:</b> Refer to row 5 (re future engagement on consent applications and through liaison groups). Refer to row 15 (re limited appeal rights rationale)</p>

#	Consulted party	Feedback received	Potential treatment of feedback ( <i>Feedback treatment listed by para. Number in feedback received column</i> )
		<p>locations might have – the Waka Kotahi Order does not have the detail and definitions of cultural sites. Doesn't want to make decisions until the rules are defined.</p> <p>Concerned that the proposed OIC will supersede NPS' if it is a cultural site. NPS' imply mana o te wai.</p>	<p>Officials note that the proposed OIC will take precedence over any conflicting requirements in national direction (refer to row 12).</p> <p><b>Policy recommendation:</b> No change.</p>
28.	<p>s9(2)(a)</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>	<p><b>Question asked:</b> Is there a defined timeframe for when the flood protection needs to be completed?</p> <p>Unhappy that the indecisions on the proposed flood works are delaying whanau receiving their insurance and moving back into their homes. Will there be a sunset clause for the proposed OIC?</p> <p><b>Comments:</b> Considers that the flood work location options should go out to the community for public engagement.</p>	<p><b>Response:</b> The SWERLA self-repeals on 31 March 2028.</p> <p>Under SWERLA, the proposed OIC will amend the RMA and associated regulations and plans to provide a streamlined process for controlled activity resource consents. Cabinet agreed that the OIC is to be revoked on 31 March 2028 when SWERLA expires. In addition, this period will allow for the project works to be consented and for construction to begin within the timeframes of the SWERLA.</p> <p>Refer to row 5 (re future engagement on consent applications and through Māori representative and stakeholder liaison groups).</p> <p><b>Policy recommendation:</b> No change.</p>
29.	<p>s9(2)(a)</p> <p>(Takitimu marae – s9(2)(a) )</p>	<p><b>Questions asked:</b> Will the proposed flood works be located near marae or urupā? Options should show the location of affected marae, urupā and houses.</p> <p><b>Comments:</b> Options need to highlight what and where the impacts will be.</p>	<p><b>Response:</b> Refer to row 5 (re Cabinet agreement on the 8 locations and OIC not predetermining detailed engineering design).</p> <p><b>Policy recommendation:</b> No change.</p>
30.	<p>s9(2)(a)</p> <p>[Redacted]</p> <p>(Tawhiti A Maru</p>	<p><b>Questions asked:</b> When does the proposed OIC enable the reclassification of the land?</p>	<p><b>Response:</b> Decisions on the timing for reclassification rests with the HBRC. Officials anticipate the Category 2C land will be recategorized after HBRC has finalised the design option and technical assessments for the flood works. It</p>

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	marae – s9(2)(a)		is likely to occur once a resource consent has been granted as the technical assessments will have been completed as part of the application process and the consent provides the certainty that the works can proceed.  <b>Policy recommendation:</b> No change.
31.	s9(2)(a) [redacted] [redacted]	<b>Comments:</b> Disappointed by the three options that are being presented, there's no confidence if the community feels like this is being predetermined. Can make a decision to go into Category 2C now.	<b>Response:</b> This relates to material provided by the HBRC for the MfE presentation showing the final 3 options for flood works in Wairoa. s9(2)(a) was concerned these had been included in the presentation as only a small group of stakeholders had seen them, and final decisions were still pending.  Officials reiterated that the Order does not predetermine the options arrived at in each location and confirmed the material would be deleted from the presentation and kept confidential.  Refer to row 5 (re OIC not predetermining detailed engineering design).  <b>Policy recommendation:</b> No change.
32.	s9(2)(a) (Wairoa District Council s9(2)(a) )	<b>Questions asked:</b> How can the community engage in the process and ensure that the conditions of consent are being implemented?  How can we establish parameters for no go zones?	<b>Response:</b> Refer to row 5 (re future engagement on consent applications and through Māori entities representative and stakeholder liaison groups).  The parameters for 'no-go' zones will be a matter for the HBRC to take into account at the engineering design stage. Officials note that the OIC will not predetermine detailed engineering design considerations at each location (refer also row 5).  <b>Policy recommendation:</b> No change.
33.	s9(2)(a) (Whaakarangi	<b>Questions asked:</b> What part of the RMA will be amended?	<b>Response:</b>

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	marae – s9(2)(a) )		<p>Cabinet agreed that the OIC will amend Part 6 of the RMA and associated regulations and plans to provide a streamlined process for controlled activity resource consents.</p> <p><b>Policy recommendation:</b> No change.</p>
34.	s9(2)(a) [Redacted]	<p><b>Questions asked:</b></p> <p>Who defines the conditions – can we do this for our community?</p> <p>HBRC must only notify those directly affected – who are the affected persons and can we define them? Who decides on the conditions?</p> <p>Can we opt out of this process and it not affect the recovery for others in our community? Concerned about the lack of data and information that these options have been made from.</p>	<p><b>Response:</b></p> <p>Refer to row 5 (re future engagement on consent applications and through liaison groups) and row 15 (re limited appeal rights rationale). Officials do not support the removal of Wairoa as one of the 8 locations for flood works. The locations are locations where flood works are necessary to mitigate future flood events and will enable approximately 975 houses to be recategorized from category 2A and 2C to category 1. There are approximately 625 houses in Wairoa with a 2A or 2C categorization and the inclusion of Wairoa in this proposed OIC is supported by the HBRC and the Wairoa District Council.</p> <p><b>Policy recommendation:</b> No change.</p>



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35.	<p>s9(2)(a) (Ngāti Pāhauwera – )</p>	<p><b>Questions asked:</b></p> <p>Is there an opportunity to delegate consents to Māori iwi groups via RMA s 33A? There's been insufficient dialogue with us regarding what needs to be done, there are existing plans e.g. Te Ngarue Plan that have not been actioned – why not? There has been unequal support and help given to communities in need.</p> <p>Certain places have been targeted in Whirinaki, and some left out – why? Question of equity between categorisation between category 2 and 3.</p> <p>Is there a document available of the scope of the cultural value report? There is a general lack of understanding for cross-over areas for iwi/hapū.</p> <p><b>Comments:</b></p> <p>As a landowner we want support, and the ability to do the work without interference.</p> <p>Māori or treaty component often gets included into the consent conditions as an afterthought.</p>	<p><b>Response:</b></p> <p>Officials note a transfer of powers is possible under the RMA but that this is a matter for the HBRC and other councils to discuss directly with the relevant Māori entities in the Hawke's Bay region. Officials do not support including an overriding direction in the OIC as there has been no prior consultation with the Hawke's Bay councils on this and MfE has not received a request from the councils to include a transfer of powers as part of the proposed OIC.</p> <p>Officials also note that the request from the Hawke's Bay councils for an OIC is to ensure flood works can be consented in 8 locations to ensure the reclassification of Category 2A and 2C land to Category 1. This work is happening within the overall recovery programme for Hawke's Bay, which includes the key decisions around the classification of residential land and the buyout process for land identified as Category 3.</p> <p>In terms of cultural values assessments, officials understand the HBRC is commissioning these for all 8 locations as part of its work preparing the consent applications.</p> <p>Officials note there is an ongoing workstream within the Government work programme that is looking at opportunities to make it easier for landowners to undertake mitigations on their own land.</p> <p>Māori and Treaty components have been considered and incorporated from the start of the draft conditions process. A Māori entities representatives condition is included to ensure that ongoing engagement with mana whenua is undertaken, and that appropriate cultural steps are taken for each project works.</p> <p>Refer to row 7 (re inclusion of Māori entities representatives and stakeholder liaison groups for future engagement on consent applications).</p>

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			<p>Refer to row 5 (re Cabinet agreement to the 8 locations).</p> <p><b>Policy recommendation:</b></p> <p>No change.</p>
36.	<p>s9(2)(a) (Maungaharuru Tangitu – s9(2)(a) )</p>	<p><b>Questions:</b></p> <p>Are the conditions in the proposed OIC different than in the Waka Kotahi Order?</p> <p>Will there be remuneration for Māori entities that are involved in engagement? How can we ensure that the Ministry embed Māori rights and interests in the proposed OIC? What is the protection at the Ministry’s end that iwi are reflected in the drafting the content?</p> <p>Is there protection built into the process of developing the proposed OIC which ensures that the Māori lens and interests are taken into account?</p> <p>Will there be a cultural value report for each of the proposed locations? It shifts the responsibility to the consent applicant.</p> <p><b>Comments:</b></p> <p>Agree with s9(2)(a) point that there has been unequal support and help given across communities.</p> <p>There has to be accountability for providing recognising things Māori. Accountability needs to sit with who is driving the process – every non-Māori needs to take the time to acquaint themselves with the issues. The obligation is on us (iwi, hapū and Māori groups) to be involved. We don’t have the resources to respond so we need to know what the opportunity is and scope to apply feedback.</p>	<p><b>Response:</b></p> <p>The proposed OIC will include a schedule of conditions that are specific to flood work infrastructure and will be developed with input from the HBRC and other councils.</p> <p>The proposed OIC includes a Māori entities representatives condition to ensure that ongoing engagement with mana whenua is undertaken, and that appropriate cultural steps are taken for each project works. The proposed condition includes requirements that the consent holder must prepare terms of reference for the Māori entities representative(s) role to be discussed and agreed with the Māori entities. This would include expectations regarding the scope of the role, timeframes, support and remuneration.</p> <p><b>Policy recommendation:</b></p> <p>No change.</p>

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37.	<p>s9(2)(a) (Heretaunga Tamatea Settlement Trust – s9(2)(a))</p>	<p><b>Questions asked:</b></p> <p>Who will be in the Review Panel? Is this a Cabinet process?</p> <p>Where is the capability to ensure that treaty and treaty partnerships are reflected in the decision-making pre-29 April?</p> <p>Is there protection in the proposed OIC to ensure responsibility for HBRC and others to recognise the interests of Māori/treaty provisions?</p> <p>How to protect our voices in this process? Resourcing and support is needed for iwi to engage and respond effectively.</p> <p>Is it documented where the cultural value reports will be? There's a general lack of understanding for cross-over areas. We would like the opportunity to provide input.</p> <p><b>Comments:</b></p> <p>Appreciate the in-person hui, grateful for the opportunity to build and maintain these relationships with agencies.</p>	<p><b>Response:</b></p> <p>The Severe Weather Events Recovery Review Panel, established by SWERLA, will operate in division, depending on the nature of the proposed OIC. The Convenor will have the responsibility for determining the appointment to any division of the panel, taking into account the relevant skills, experience and knowledge of members and the matters subject to the proposed OIC.</p> <p>Officials have passed on the feedback regarding resourcing and support for iwi to the HBRC.</p> <p>Officials seek to ensure the engagement and policy development process is designed to consider and address Treaty related matters. To support achieving this, the statutory engagement period was extended from the minimum of 3 days under SWERLA to 3 weeks to provide more time for people to respond. In the OIC, officials are recommending a further two engagement steps that provide for written comments on the consent applications and for stakeholder liaison groups to be established and Māori entities representatives to be appointed.</p> <p>The proposed OIC has a schedule of resource conditions, including a Māori entities representatives condition to ensure that ongoing engagement with mana whenua is undertaken, and that appropriate cultural steps are taken for each of the flood works areas. Officials also understand HBRC has commenced desktop archaeological assessments and is engaging with mana whenua to provide cultural value assessment reports.</p> <p>Refer to row 1 (re including an accidental discovery protocol condition).</p> <p>Refer to row 5 (re future engagement on consent applications and through kaitiaki advisors and liaison groups).</p> <p><b>Policy recommendation:</b></p> <p>No change.</p>

#	Consulted party	Feedback received	Potential treatment of feedback (Feedback treatment listed by para. Number in feedback received column)
38.	<p> <span style="background-color: #cccccc; display: inline-block; width: 40px; height: 1em; vertical-align: middle;"></span>  s9(2)(a)  (Mana Ahuriri  – <span style="background-color: #cccccc; display: inline-block; width: 40px; height: 1em; vertical-align: middle;"></span>  <span style="background-color: #cccccc; display: inline-block; width: 40px; height: 1em; vertical-align: middle;"></span> ) </p>	<p><b>Comments:</b></p> <p>Trust the process that is being proposed for the OIC – anything that will support communities. Supports the proposed OIC.</p> <p>The presentation refers to regulatory road blocks, is this referring to engagement with mana whenua?</p>	<p><b>Response:</b></p> <p>Noted.</p> <p>The term ‘regulatory road blocks’ is used by the Hawke’s Bay Regional Recovery Agency (HBRRRA) in several of their documents including the Hawke’s Bay Regional Recovery Plan and their 2023 briefing to incoming Ministers. Officials used this term in the presentation to link the proposed OIC back to the original request by the HBRRRA for regulatory relief.</p> <p><b>Policy recommendation:</b></p> <p>No change.</p>

Iwi/Māori Hui

Online Hui – MfE hosted Petane Marae – 12 March 2024

#	Consulted party	Feedback received	Potential treatment of feedback (Feedback treatment listed by para. Number in feedback received column)
39.	s9(2)(a)	<p><b>Questions asked:</b>            What is the capability to recover and reinstate the marae and land?             Understands that marae can be relocated under the Whenua Māori Pathway but the urupā cannot be relocated like marae can. How can you ensure that the urupā will not be affected by the proposed flood works?</p>	<p><b>Response:</b>            The recovery and reinstatement of marae and land is beyond the scope of the proposed OIC. Officials note this could potentially fall within the scope of the Whenua Māori pathway. The pathway is managed by the Cyclone Recovery unit in the DPMC and officials have contacted the CRU to advise them of Petane Marae’s concerns.             The proposed OIC does not remove the requirement for cultural and environmental impacts to be considered as part of the process.             Refer to row 5 (re inclusion of a Māori entities representative condition for future engagement on consent applications).   <b>Policy recommendation:</b>            No change.</p>
40.	s9(2)(a) (Petane Marae s9(2)(a))	<p><b>Questions asked:</b>            Disappointed with the lack of engagement. What is the Ministry for the Environment’s plan for further engagement with us and other impacted marae?             Understands that there is a need to streamline the resource consent process for the proposed flood works. But there needs to be more consultation on the eight identified locations – how can we ensure ongoing engagement? We need resources to be involved in this process to move forward as a marae.             Does the proposed OIC address the potential upstream/downstream impacts? What about including specific mitigation for urupā?</p>	<p><b>Response:</b>            The proposed OIC includes a further two engagement steps that provide for written comments on the consent applications and for stakeholder liaison groups to be established and Māori entities representatives to be appointed. Refer to row 5 (re future engagement on consent applications and through Māori entities representatives and stakeholder liaison groups).             The proposed OIC does not predetermine the detailed flood work design, refer to row 5 (re OIC not predetermining detailed engineering design).            The ethos behind the approach outlined above is that the proposed flood works projects will be locally led, regionally operated and nationally supported. The proposed OIC will streamline the consenting process, it will not remove or reduce cultural or environmental requirements.</p>

#	Consulted party	Feedback received	Potential treatment of feedback (Feedback treatment listed by para. Number in feedback received column)
		<p><b>Comments:</b>            Agree with streamlining process but Petane Marae haven't been involved in developing the proposed OIC. We have seen councils leading and engaging with government officials but not with the marae. Want to be part of solution.</p> <p>While OIC needs to be flexible and key principles for Minister's consideration, for us it to be locally led.</p> <p>There needs to be an inclusion of matauranga Māori and local people in the proposed OIC. There needs to be more engagement with iwi, hapū, and Māori communities before the proposed OIC progresses.</p> <p>With proposed OIC adapting Waka Kotahi approach – works impacts our people who own land haven't been engaged with. Important to engage with before OIC before it goes forward.</p> <p>Engagement is more than a Cultural Impact Assessment – it is about sharing korero and having greater involvement in the process. Notes having met with HBRC on 11 March. Discussed having one of marae people sitting in the project team parallel to this process.</p> <p>12 months of work – there's engagement fatigue. Discussions are not being included or reflected what is in front of us.</p>	<p><b>Policy recommendation:</b>            No change.</p>
41.	s9(2)(a) [Redacted]	<p><b>Questions asked:</b>            Does the proposed OIC consider nature-based solutions such as widening of the river mouth? There's a lack of clarity regarding downstream impacts of the proposed flood works. There needs to be more engagement with the landowners that will be impacted by the flood works.</p> <p><b>Comments:</b></p>	<p><b>Response:</b>            The proposed OIC does not predetermine the detailed flood work design, refer to row 5 (re OIC not predetermining detailed flood work design). Additionally, when determining the consent application, the consent authority will assess the proposal against the matters of control in the OIC (including the risk of flooding upstream or downstream of the proposed flood works) before granting consent.</p>

#	Consulted party	Feedback received	Potential treatment of feedback (Feedback treatment listed by para. Number in feedback received column)
		<p>Acknowledged pā and urupā sites.</p> <p>Left hand not knowing what the right is doing. Need to ensure that there is ongoing engagement. Need to ensure that the downstream impacts are being considered – include nature-based solutions as well such as the widening of the river mouth.</p>	<p>Officials seek to ensure the engagement and policy development process is designed to consider and address Treaty related matters. To support achieving this, the statutory engagement period was extended from the minimum of 3 days under SWERLA to 3 weeks to provide more time for people to respond. The proposed OIC includes a further two engagement steps that provide for written comments on the consent applications and for stakeholder liaison groups to be established and Māori entities representatives to be appointed. Refer to row 5 (re future engagement on consent applications and through Māori entities representatives and stakeholder liaison groups).</p> <p><b>Policy recommendation:</b> No change.</p>
42.	s9(2)(a)	<p><b>Comments:</b> It is about protecting the special status as whenua Māori. Our hapū and people are upset about the lack of engagement so far.</p>	<p><b>Response:</b> See response above and refer to row 5 (re future engagement on consent applications and through Māori entities representatives and stakeholder liaison groups).</p> <p><b>Policy recommendation:</b> No change.</p>

Online Hui – MfE hosted Tatau Tatau Ki Wairoa Trust on 14 March 2024

#	Consulted party	Feedback received	Potential treatment of feedback (Feedback treatment listed by para. Number in feedback received column)
43.	<p>s9(2)(a)</p> <p>(Tatau Tatau Holdings Limited - s9(2)(a) )</p>	<p><b>Questions asked:</b></p> <p>How do we ensure separation of roles of HBRC as regulator and as applicant, and how will the voice of mana whenua be heard throughout this process and with a commissioner?</p> <p>Will kaitiaki groups work with the applicant and the stakeholders to ensure they align with what has been agreed?</p>	<p><b>Response:</b></p> <p>Refer to row 4 (re OIC position on independent planning commissioners / hearing panel)</p> <p>Refer to row 5 (re future engagement on consent applications and through Māori entities representatives and stakeholder liaison groups)</p>

#	Consulted party	Feedback received	Potential treatment of feedback (Feedback treatment listed by para. Number in feedback received column)
		<p>Wants engagement to be locally led by kaitiaki and stakeholders. Will the proposed OIC retain PSGEs and statutory acknowledgements?</p> <p>How does the proposed OIC relate to fast track consenting?</p> <p>Will the conditions in the proposed OIC include one or more conditions to require specialized te ao Māori knowledge?</p> <p>Does the proposed OIC cover state highway protection and housing? Cyclone Gabrielle has impacted housing.</p> <p><b>Comments:</b></p> <p>Agree with embedding the need for te ao Māori experts and knowledge into the policy of the proposed OIC.</p> <p>Good to hear that an independent commissioner process that include appropriate experts is being considered as part of the conditions.</p>	<p>The ethos behind the approach outlined above is that the proposed flood works projects will be locally led, regionally operated and nationally supported. The proposed OIC will streamline the consenting process, it will not remove or reduce cultural or environmental requirements.</p> <p>The proposed OIC is a separate process to fast track consenting.</p> <p>There are existing OICs that cover state highways and housing. The Waka Kotahi and KiwiRail OICs cover transport infrastructure, and the temporary housing and a streamlined planning process OIC to enable faster plan changes for housing.</p> <p><b>Policy recommendation:</b></p> <p>No change.</p>

Online Hui – MfE hosted public hui – 13 March 2024

#	Consulted party	Feedback received	Potential treatment of feedback (Feedback treatment listed by para. Number in feedback received column)
44.	s9(2)(a) (Forest and Bird)	<p><b>Questions asked:</b></p> <p>Communities are investing in their properties that are still at high risk – some homes have flooded more than once since Cyclone Gabrielle. How long until we can see an improvement in flood protection?</p>	<p><b>Response:</b></p> <p>Hawke’s Bay Regional Council have been reinstating existing flood protection over the past 12 months. Construction work for the proposed flood works in Waiohiki is targeted to start in October 2024.</p> <p><b>Policy recommendation:</b></p> <p>No change.</p>



#	Consulted party	Feedback received	Potential treatment of feedback (Feedback treatment listed by para. Number in feedback received column)
45.	<p>s9(2)(a) (Between the Two Rivers)</p>	<p><b>Questions asked:</b> Why the short timeframes to comment on the proposed OIC?  It would be good to see the details and proposed conditions – why is this information not available on the consultation page?  <b>Comments:</b>  We have concerns about the Ohiti Road stop bank, especially because we do not have any details about the proposed designs. Understanding levers will give confidence to ensure the right checks and balances are in place.</p>	<p><b>Response:</b> MfE acknowledges the tight timeframes for providing feedback. The SWERLA requires a minimum of 3 working days for public consultation on the proposed OIC. This OIC proposal has provided three weeks of public engagement for members of the public to provide written feedback. This was the maximum amount of time officials could provide while balancing the need to progress this proposal with urgency.  Refer to row 5 (re future engagement on consent applications and through liaison groups).  Refer to row 5 (re OIC not predetermining detailed engineering design).  <b>Policy recommendation:</b> No change.</p>
46.	<p>s9(2)(a) Between the Two Rivers, s9(2)(a) )</p>	<p><b>Questions asked:</b> How do you select who you consult with? We are unsure who has been consulted with, but we have an issue with the scope of engagement and analysis to date. We are concerned with the lack of opportunities to engage on these options when the proposed OIC is limiting engagement.  We are very interested in seeing the types of conditions.</p>	<p><b>Response:</b> Officials understand further engagement is being carried out by the HBRC and local councils as they work to finalise their engineering and design options ahead of lodging consent applications. As part of this process the HBRC is continuing to engage directly with affected parties in the project locations.  Refer to row 5 (re future engagement on consent applications and through liaison groups).  <b>Policy recommendation:</b> No change.</p>
47.	<p>s9(2)(a) (Mitchell Daysh, s9(2)(a) )</p>	<p><b>Questions asked:</b> The only way to receive meaningful feedback is to see the draft OIC – when will this be made available to interested parties?</p>	<p><b>Response:</b> Officials do not support the sharing a draft OIC for the reasons outlined above in row 7 (timeliness and risk of delay to the overall process).  <b>Policy recommendation:</b> No change.</p>
48.	<p>s9(2)(a) (Water New</p>	<p><b>Questions asked:</b> Water New Zealand is generally supportive of the proposed OIC. How to ensure that people are aware that the flood</p>	<p><b>Response:</b></p>

#	Consulted party	Feedback received	Potential treatment of feedback (Feedback treatment listed by para. Number in feedback received column)
	Zealand, [redacted] s9(2)(a)	<p>protection does not remove the risk? Want policy intent to ensure this.</p> <p>How to ensure that this does not encourage further development within an at-risk area?</p> <p>Will the flood protection be replaced like-for-like or will it be improved?</p>	<p>This is beyond the scope of the proposed OIC. The feedback will be passed to the relevant team within MfE who are developing national direction on natural hazards risk and to the Hawke’s Bay Councils for them to consider.</p> <p>The HBRC has rebuilt and replaced the existing flood protection structures where needed. The proposed OIC does not predetermine the concept, or the engineering of the flood works.</p> <p>Refer to row 5 (re OIC not predetermining detailed engineering design).</p> <p><b>Policy recommendation:</b> No change.</p>
49.	[redacted] s9(2)(a) (Tangoio Marae, s9(2)(a) )	<p><b>Questions asked:</b> What is the difference between Whirinaki and Tangoio – they were both equally affected. We cannot build or farm on our land in Tangoio, but we do not want to give it up. Our land that remains has survived significant flooding since the 1930s – we have major concerns that we cannot stay on our lands. We do not have insurance - it’s about us choosing the risk. How can we be helped when the land is Category 3?</p> <p><b>Comments:</b> Want to find a way to use land so families can still go there and use it.</p>	<p><b>Response:</b> Crown Agencies have a separate ongoing work programme on the whenua Māori pathway that addresses these concerns.</p> <p>Refer also to response above in row 48.</p> <p><b>Policy recommendation:</b> No change.</p>
50.	[redacted] s9(2)(a) (Te Tumu Paeroa, s9(2)(a) )	<p><b>Questions asked:</b> A lot of the Māori landowners are not located on the land and therefore engagement with affected parties is a significant concern for us.</p>	<p><b>Response:</b> See the detailed response in row 6.</p> <p>Refer to row 5 and row 6 (re future engagement on consent applications and through Māori representation and stakeholder liaison groups).</p> <p><b>Policy recommendation:</b> Officials recommend to include ‘all relevant Māori entities’ into the engagement conditions to ensure Māori trustees are engaged with.</p>

#	Consulted party	Feedback received	Potential treatment of feedback ( <i>Feedback treatment listed by para. Number in feedback received column</i> )
51.	<p>s9(2)(a) (Ministry of Primary Industries, s9(2)(a) )</p>	<p><b>Questions asked:</b>                      Why does an independent hearing panel need to be involved?                      Will one panel process all applications that fall under the proposed OIC?                      Does the independent panel only process the resource consents? Is a public hearing expected?</p> <p><b>Comments:</b>                      Support the proposed OIC proposing to process each resource consent as controlled activities.                      Suggest independent suitably qualified expert panel instead of independent panel.                      Councils will still have to consult with their communities on the consent conditions. Conditions need to be realistic and achievable.                      The proposed flood works are not the only thing iwi and hapū are being consulted on. Groups are being stretched thin by engagements. Don't want the flood works to be delayed if engagement conditions are a problem. Suggest inquiring if there are existing groups e.g. catchment committees that can have ongoing liaison with HBRC. Need to ensure that the engagement is locally led.                      Going from discretionary to controlled, there needs to be certainty for community to see something that they feel safe.</p>	<p><b>Response:</b>                      The consent authority in most cases will be HBRC acting independently from their other role as asset manager and applicant. There are standard RMA processes to manage this, including by using independent planning commissioners to determine the consent applications. Under standard RMA processes the HBRC (as consent authority) could appoint a single panel or set of planning commissioners to act under delegation to grant consent to all eight resource consents.                      The resource consents will be processed as controlled activities. Officials recommend the consent authority grants the resource consents within 30 working days of the date of lodgment. Officials recommend the public notification and hearing processes in the RMA are replaced with a process wherein the consent authority notifies specified persons and invites them to provide written comments on the application.                      Officials acknowledge MPI's concerns regarding iwi/hapū resourcing constraints. As a matter of practice, officials anticipate the HBRC will address this when preparing the terms of reference for the Māori representatives role is discussion with iwi/hapu, PSGEs and other Māori entities.                      Refer to row 4 (re OIC position on independent hearing panel).                      Refer to row 5 (re future engagement on consent applications and through Māori representation and stakeholder liaison groups).</p> <p><b>Policy recommendation:</b>                      No change.</p>
52.	<p>s9(2)(a) (Te Tumu Paeroa – Office of the Māori Trustee,</p>	<p><b>Questions asked:</b>                      Will there be consultation with particular stakeholders on the draft conditions prior to resource consent decision? How much time would be provided for this to occur?</p>	<p><b>Response:</b>                      Officials recommend the OIC includes two further engagement steps. Refer to row 5 (re future engagement on consent applications and through Māori entities representatives and stakeholder liaison groups).</p>

	<p>s9(2)(a)      )</p>	<p><b>Comments:</b>  There is proposed to be a truncated set of application documents: Instead of complying with section 88(2) of the RMA, an application for a resource consent for flood works must include—</p> <ol style="list-style-type: none"> <li>a. a general description of the flood works intended to be carried out:</li> <li>b. a general description of the site where the work is to occur, including—</li> <li>c. a map of the area:</li> <li>d. any identified cultural values:</li> <li>e. details of any culturally significant land:</li> <li>f. an assessment (which may be a desktop assessment) of the potential effects of the work with input from appropriate experts, including consideration of—all reasonably available information; and</li> <li>g. the potential effects on any cultural values identified by a relevant iwi or hapū; and</li> <li>h. the potential effects on any culturally significant land that is within, or adjacent to, the site where the work is to occur;</li> <li>i. the potential downstream effects of the works:</li> <li>j. proposals to avoid, remedy, or mitigate those effects:</li> <li>k. any conditions that the applicant proposes for the consent:</li> <li>l. a description of any consultation undertaken in relation to the work, including with relevant Māori entities.</li> </ol> <p>Does there need to be a provision for stakeholders to be a second opinion? Or does it get sorted out down the track?</p>	<p>Cabinet agreed that the OIC will amend the RMA and associated regulations and plans to provide a streamlined process for controlled activity resource consents.</p> <p><b>Policy recommendations</b>  No change.</p>
53.	<p>s9(2)(a)  (New Zealand Transport Agency, s9(2)(a)  )</p>	<p><b>Questions asked:</b>  Does the independent hearing panel make the decision, not a recommendation?  Considering the potential interplay between the proposed OIC and the Waka Kotahi OIC. Proposed designs have not been</p>	<p><b>Response:</b>  Refer to row 4 (re OIC position on independent hearing panel). Officials are not recommending any changes to the existing RMA processes regarding the appointment of independent planning commissioners to determine consent</p>

		<p>confirmed yet where the interplay between the two can affect each other. There have been ongoing discussions with HBRC regarding the proposed options. How will the two OICs work together when they both streamline the RMA processes?</p> <p>How do we ensure that the design processes between the two OICs integrate? Via ongoing engagement between parties?</p> <p><b>Comments:</b> Ongoing engagement can either be addressed in the assessment of the consent application or through the consent application. Recommend engagement to be included as part of the assessment of the application.</p> <p>Liaison groups. There is a broad group of persons that need to be invited, and who are already part of other liaison groups. Their capacity is already stretched. And additional liaison group commitment from the proposed OIC will further stretch their capacity.</p>	<p>applications. As such, it is expected the commissioners would have delegated authority from the HBRC to make decisions.</p> <p>Officials acknowledge the need for network utility operators, the HBRC assets team and other infrastructure providers to work closely in instances where their programs may overlap. The proposed conditions will support this approach by requiring the consent holder to engage with infrastructure providers by inviting them to join the stakeholder liaison group. Officials also recommend the OIC includes a requirement for the consent authority to notify network utility operators and requiring authorities and invite those persons to make written comments on the application.</p> <p>Officials also recommend the matters of control requires the consent authority to consider the effects of the proposal on other infrastructure assets.</p> <p>Refer to rows 4 and 8 (re OIC position on independent hearing panel), and refer to row 5 (re future engagement on consent applications, including conditions to establish Māori entities representatives and stakeholder liaison groups).</p> <p><b>Policy recommendations</b></p> <p>Officials recommend that infrastructure providers are included in the consultation with specified persons condition to ensure ongoing engagement. Officials have recommended that the effects on other infrastructure assets are included as a matter of control.</p> <p>Officials recommend that the integration between the proposed OIC and Waka Kotahi OIC is addressed via the engagement processes recommended in the OIC including its schedule of consent conditions. Officials also recommend that effects on other infrastructure assets will be addressed in the matters of control.</p>
54.	<p>s9(2)(a) (Land Information New Zealand)</p>	<p><b>Questions asked:</b> Does the proposed OIC only enable hard-engineering options or also consider nature-based design eg, more freely running rivers?</p>	<p><b>Response:</b> The purpose of the proposed OIC is to streamline the consenting process for the flood works and the need for recovery for the Category 2C houses and land.</p> <p>Refer to row 5 (re OIC not predetermining detailed engineering design).</p>

			<b>Policy recommendations</b> No change.
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