

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

Coversheet

Purpose of Document	
Decision sought:	This analysis will inform Cabinet decisions on the proposed Severe Weather Emergency Recovery Legislation (Auckland flood recovery works) Order
Advising agencies:	Ministry for the Environment
Proposing Ministers:	Hon Penny Simmonds, Minister for the Environment
Date finalised:	16 July 2024
Problem Definition	
<p>Following the Auckland Anniversary Weekend floods and Cyclone Gabrielle (the severe weather events) in January and February 2023, several locations across the Auckland region were identified where critical safety enhancements and improvements to the resilience of infrastructure specific to flood control and mitigation infrastructure ('project works') are required. Two locations in the Auckland region (Harania and Te Ararata) have been identified amongst the worst affected areas in Auckland with approximately 376 affected properties, including at least 56 properties where there is an intolerable risk to life (Category 2 or 3).</p> <p>The project works have been identified as a key action in Te Mahere Whakaroa mō Tāmaki Makaurau (the Tāmaki Makaurau Recovery Plan) and supported by the Making Space for Water programme of works. The works are funded in the Long Term Plan¹.</p> <p>Auckland Council have requested an Order in Council to address and speed up the recovery efforts following the severe weather events to increase protection against flooding in south Auckland.</p> <p>The key policy issue this proposal seeks to address is to ensure that affected homeowners in the catchments of Te Ararata and Harania are not left in situations of uncertainty of intolerable risk for prolonged periods of time.</p> <p>Flood recovery project works are required to support the protection of residential properties in the Harania and Te Ararata catchments of Māngere, South Auckland and are required to mitigate the risk to life.</p> <p>Auckland Council is anticipating the flood recovery project works be scheduled to begin in the summer of 2024/2025 and due for completion by July 2026. This is determined on necessary resource consents being obtained beforehand. However, the complex process of obtaining resource consents under the standard consenting pathway in the Resource Management Act 1991 (RMA) means that delays and uncertainty to the process are likely. The business-as-usual (BAU) resource consenting process is likely to take more than 12</p>	

¹ With further crown funding approval to be decided in July 2024.

months². This would have serious impact on people who own houses identified as Category 2 and 3 properties which have an intolerable risk to life from flooding and/or landslides in Auckland.

Executive Summary

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

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

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

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

Limitations and Constraints on Analysis

Limitations on the problem definition or options considered

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

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

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

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

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

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

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

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

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

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

Treaty obligations, in order to achieve the milestones in [Te Mahere Whakaroa mō Tāmaki Makaurau \(the Tāmaki Makaurau Recovery Plan\)](#) work programme. The estimated total costs of these projects is \$53.84 million. The council portion of this funding has been approved as part of the overall Making Space for Water budgets through the Long Term Plan 2024-2034³ and the works are a key action in [the Tāmaki Makaurau Recovery Plan](#).

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

Responsible Manager(s) (completed by relevant manager)

Heidi Baillie
 Manager
 Recovery Provisions - Adaptation
 Ministry for the Environment



16 July 2024

Quality Assurance (completed by QA panel)

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

³ With further crown funding approval to be decided in July 2024.

Section 1: Diagnosing the policy problem

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

Current state within which action is proposed (status quo)

Impacts of severe weather events in January and February 2023

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

Table 1 Residual risk from project works

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

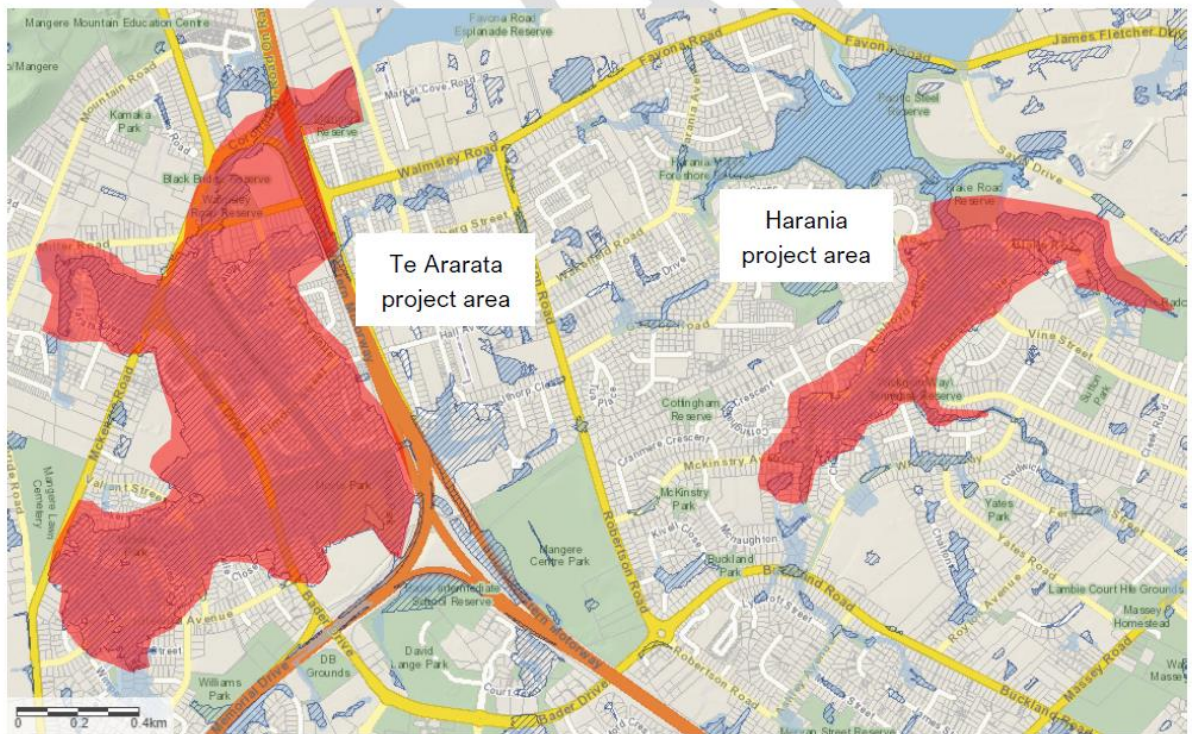


Figure 1 The proposed works aim to reduce the risk from significant flood prone areas of Māngere with the two catchment sites shown in red

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

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

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

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

Key features and objectives of the regulatory system currently in place

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

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

Key legislation of relevance

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

What is the policy problem or opportunity?

The nature, scope and scale of the problem

16. The North Island of New Zealand experienced severe weather events in January and February 2023, including Cyclone Gabrielle, resulting in substantial damage to the economy, infrastructure, natural environment, and community wellbeing. In Auckland, flood levels rose in the creeks and water overflowed the banks of the creeks and entered people's homes as a result of debris constricted channel and course of the creeks and significant volumes of water inundating the system.
17. The flood works have been identified as a key action in the Tāmaki Makaurau Recovery Plan and supported by the Making Space for Water programme of works. The works are funded in the Long-Term Plan⁴. The Tāmaki Makaurau Recovery Plan was approved January 2024 and Auckland Council's Governing Body adopted the Long-term Plan 2024-2034 on 27 June 2024 which set out local government funding for the works.
18. Two locations in the Auckland region (Harania and Te Ararata) have been identified for this proposed Order in Council as two project sites where there are approximately 376 affected properties, including at least 56 properties where there is an intolerable risk to life.
19. The policy problem is that there are flood recovery works needed in the Te Ararata and Harania catchments, and the property owners and residents in these areas are facing sustained risk exposure and uncertainty which is an unacceptable situation. MfE is reviewing all potential consenting pathways (including the retained fast-track consenting pathway from the now repealed Natural and Built Environment Act 2023 (NBA)) to ensure the works can begin, and be completed, without delays (see Table 1 below).
20. The key reason to look for ways to progress consenting faster than the currently available pathways are:
 - The project works are necessary to ensure properties preliminarily identified as Category 2 can safely shift to Category 1. A significant number of residents are currently in limbo facing ongoing flooding risks

⁴ With further crown funding approval to be decided in July 2024.

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

Who is affected by this issue?

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

What objectives are sought in relation to the policy problem?

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

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

Focus of this interim Regulatory Impact Statement

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

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

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

What scope will options be considered within?

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

What options are being considered?

Option 1 – Status Quo

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

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

Option 2 – Auckland Council Flood Recovery Works Order in Council

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

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

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

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

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

51. The Government has retained the fast-track consenting pathway from the now repealed Natural and Built Environment Act 2023 (NBEA). This is an interim measure until a new, standalone fast-track consenting legislation comes into effect. The projects works are eligible activities⁵ and may be consented under this pathway. The expected timeframes for this pathway is approximately 12 months.

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

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

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

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

Option 6 – RMA Notices of requirement for new designations

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

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

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

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

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

Option 9 – use the new Fast Track Bill approvals

63. The Fast Track Bill proposes to establish a permanent fast track approvals regime for a range of infrastructure, housing and development projects. The Bill has been introduced to the House and public submissions are being accepted by the Environment Committee.
64. This pathway may save time compared with normal BAU processing and reduces the concern around appeal timeframes, but the level of uncertainty and enactment timing means that it would not allow the works to be started in the summer 2024/2025 earth working season.
65. The Bill is anticipated to be based on previous fast-track consenting regimes, but with important differences to enable projects that have significant local, regional, or national benefits to be consented more quickly and more efficiently. The Bill will set out a ‘one-stop shop’ process for approvals under a range of legislation. The Bill may contain a list of projects that will be assessed in parallel to the development of the Bill and provided to the Minister for referral assessment almost immediately upon enactment.
66. Applications will be assessed against a set of criteria by the Minister for Infrastructure as responsible Minister (with assistance from relevant agencies), to determine their benefits for the economy and environment. The assessment will ensure protections for Treaty of Waitangi settlements and other legislative arrangements including under the Marine and Coastal Area (Takutai Moana) Act 2011, Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, Mana Whakahono ā Rohe and Joint Management Agreements made under the RMA.
67. The responsible Minister would then decide whether to refer the project to an Expert Panel (EP). The EP would then apply any necessary conditions to ensure a project meets environmental and other outcomes.
68. The legislative process for the Bill extends into mid-late 2024.⁶ It will not be available in time to consent the project works. When enacted it is likely the new fast-track process will remove the need for future Orders that modify RMA consenting processes. However, until the legislation is in place, it is not a viable option to consent the project works.

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

How do the options compare to the status quo?

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

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

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

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

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

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

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

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

Section 3: Delivering an option

How will the new arrangements be implemented?

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

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

Monitoring and evaluation

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

Review of the Order in Council

75. It is proposed that the OIC be reviewed one year after enactment. This review will be undertaken by MfE as part of MfE's regular and ongoing reviews (which started in early 2024) of OICs that are made under the SWERLA, and for which the Minister for the Environment is the responsible Minister.
76. Section 12 of the SWERLA requires the relevant Minister to keep OICs under review and decide whether they continue to be satisfied in relation to the following matters (SWERLA section 8(1)(a)):
 - The order is necessary or desirable for one or more purposes of SWERLA
 - the extent of the order is not broader (including geographically broader in application) than is reasonably necessary to address the matters that gave rise to the order.
 - the order does not breach section 11⁷ of the SWERLA
 - the order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990.
77. The main steps of a review by the responsible agency are:
 - Approximately two months before a review begins, MfE informs stakeholders and Treaty partners about the information it is seeking, the relevant dates for the period to which the information refers, and opportunities for engagement.
 - MfE engages with internal and external stakeholders, and Treaty partners, to receive feedback on the use of the OICs and the impacts they are having.

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

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