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Appendix 2

Interim Regulatory Impact Statement

Interim Regulatory Impact Statement: Severe Weather Emergency Recovery Legislation (Hawke’s Bay Rural Recovery Works) Order

Coversheet

Purpose of Document	
Decision sought:	This interim analysis will inform Cabinet decisions on the proposed Severe Weather Emergency Recovery Legislation (Hawke’s Bay Rural Recovery Works) Order
Advising agencies:	Ministry for the Environment
Proposing Ministers:	Hon Penny Simmonds, Minister for the Environment
Date finalised:	18 June 2024
Problem Definition	
<p>Severe weather events in early 2023, including Cyclone Gabrielle, caused extensive damage to the North Island. This affected the economy, infrastructure, and environment, with Hawke's Bay experiencing severe agricultural and infrastructure losses.</p> <p>Despite ongoing recovery efforts, the rural community face significant challenges in completing necessary recovery works due to the unprecedented scale of damage, financial burdens from less than profitable agricultural conditions, as well as complex and costly resource consent processes.</p>	
Executive Summary	
<p>In January and February 2023, the severe weather events including Cyclones Hale and Gabrielle caused significant damage across the North Island and in particular in the Hawke’s Bay. These are described as the North Island Weather Events (NIWE). Many rural landowners and occupiers are still struggling to maintain profitability levels on their land under cyclone-damaged conditions, and many are in financial uncertainty. As a result, the rural community are still undertaking or planning to complete recovery works on their properties more than 15 months after the NIWE.</p> <p>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.</p> <p>SWELA introduced a permitted activity regime for rural landowners / occupiers by creating sections 331A-331E to the RMA which repealed on 1 April 2024. It allowed rural landowners and occupiers to undertake emergency works on their properties immediately following the severe weather events as a permitted activity. It applied to the Auckland Council, Bay of Plenty Regional Council, Carterton District Council, Hawke’s Bay Regional Council, Manawatū District Council, Masterton District Council, Northland Regional Council, Rangitikei District Council, South Wairarapa District Council, Tararua District Council and Waikato Regional Council.</p>	

The SWELA rural emergency works regime has not been fully implemented as Parliament intended it would be. In early 2024, the Hawke's Bay Regional Recovery Agency (HBRRA) and Hawke's Bay Regional Council (HBRC) surveyed rural landowners on recovery progress. About 98% of respondents experienced cyclone related damage on their land. About 94% of respondents still have recovery works to complete, having not been able to utilise the permitted activity regime under SWELA before its expiry due to finance, availability of contractors and extended wet weather conditions. The HBRRA asked the Minister for the Environment to extend the regime under SWELA as, despite the emergency being over, there are ongoing recovery activities to be undertaken.

SWELA was shortly followed by the Severe Weather Emergency Recovery Legislation Act 2023 (SWERLA) which provided for Orders in Council (OICs) to be made and is active until 2028. 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.

Ministry for the Environment (MfE) officials have reviewed all potential pathways and have determined that an OIC is necessary to enable rural landowners and occupiers to carry out rural recovery works on their land. The proposed OIC also supports the ongoing rebuild and recovery of the Hawke's Bay region post-severe weather events.

This proposed OIC seeks to respond to the present day needs of rural landowners and occupiers in the Hawke's Bay. Rather than an outright extension of SWELA (which would require primary legislation) the proposal is to amend the RMA through an OIC to permit rural recovery activities until 31 December 2025. The proposed OIC would contain standards to manage the adverse effects resulting from rural recovery works.

Limitations and Constraints on Analysis

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 provided through a survey from the HBRRA, and conversations with sector organisations and the HBRC, who are in close contact with those directly affected by the severe weather events. MfE is also developing a data set of rainfall data and land movement data to help quantify the scale of the damage experienced in the Hawke's Bay region.

This proposal is for an OIC for rural recovery works limited to the Hawke's Bay region. Officials approached all regions and districts affected by severe weather events under SWERLA to assess the need for such a regime. The Tararua District Council confirmed support, and officials are collecting data to evaluate the need in this district. The HBRC, HBRRA, and Hawke's Bay industry organizations have reported that damage in Gisborne may be as severe as in Hawke's Bay. Officials are in discussions with Gisborne District Council to assess the need there.

Under SWERLA, the Minister must engage with local Māori, local community groups and the public and seek their comments on the proposed OIC. The parties have three working days to make their comments to the Minister. The Minister has a discretion to allow for a longer time and in this case public consultation is planned for two weeks, totalling nine working days.

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

- The HBRRA estimate there will be a stronger focus on repair and rebuild activities over the next 6-12 months – particularly post-winter as ground conditions allow for works to be undertaken. This will include recovery activities that would ordinarily require a resource consent as well as other activities, such as repairing cyclone damaged fences, that would not.
- There is a large volume of rural recovery work across the Hawke’s Bay region that has not been able to be completed. Access within properties and to properties remains a critical issue for returning properties to pre-event production.
- The inability to get back to pre - NIWE conditions and regain economic security has resulted in significant financial and personal stress on farmers, which is being felt over a long period of time and resulting in extreme fatigue/exhaustion.
- Rural landowners and occupiers require certainty to undertake necessary work to reinstate their land to its pre - NIWE state.
- Resourcing needs already placed on the local authorities across severely affected regions is substantial. Without regulatory relief there is likely to be a significant increase in consenting, compliance and enforcement work. This will place further pressure on local authority resources which are already stretched.
- With rural recovery as of yet incomplete, resilience in these areas is currently low, necessitating ongoing support to recover from previous events and bolster resilience. Completing recovery works before any future severe weather events is crucial to mitigate severe impacts and prevent exacerbating existing issues.

Responsible Manager(s) (completed by relevant manager)

Heidi Baillie
 Manager
 Recovery Provisions - Adaptation
 Ministry for the Environment



19 June 2024

Quality Assurance (completed by QA panel)

Reviewing Agency:	Ministry for the Environment’s Regulatory Impact Analysis Team
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 Rural Recovery Works) Order 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 (Hawke’s Bay Rural Recovery Works) Order Interim RIS is comprehensive, well-written and in response to a clear need, with risks and constraints clearly defined and discussed.</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 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 (the NIWE). This 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; over 120 bridges were either significantly damaged or destroyed, and substantial areas of land in the region are no longer safe to inhabit.
2. The North Island's recovery from the NIWE is an ongoing and pressing concern. Significant areas of land remain that were severely damaged by flood waters, silt and landslide particularly in the Hawke's Bay region. The attached Hawke's Bay Landslide map (refer Appendix A) shows the extent of landslides experienced in that region. MfE has been advised that many rural landowners/occupiers still have recovery activities to undertake.
3. In early 2024, the HBRRA and the HBRC undertook a survey on recovery progress by rural landowners with properties over 20 hectares (over 1500 farms in Hawke's Bay) with over 200 responses received.
4. About 98% of respondents experienced cyclone related damage on their land such as water supply damage, stock water system or dam damage, sediment across sites, planting losses, and issues with access around properties. The forestry sector has also identified culvert replacements and bridge repairs as a priority, and they anticipate the sector will also need to carry out earthworks, rebuild roads and replace existing structures damaged by the NIWE.
5. Based on the information from survey respondents around the amount of recovery work remaining (with 94% stating that they still have recovery works to complete) and comparing the responses received against GIS mapping showing the extent of landslips in the Hawke's Bay region, the scale of consents still required to enable recovery after the NIWE is significant.

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

6. The status quo is that there is no OIC nor other new resource management mechanism 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. This would miss the opportunity to undertake the recovery works within a timescale that would enable earlier recovery from the severe weather events.
7. The works required for rural recovery will require discretionary or non-complying activity consents under the Hawke's Bay regional plan, district plans, and the National

Environmental Standard for Freshwater (NESF) (refer Appendix B). Obtaining resource consents under the standard consents process in the RMA would be a complex process for the scale of the works required (see Table 1 below), 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, these recovery works could not begin swiftly and this would significantly affect rural recovery across the region. The costs and other burdens associated with these processes also falls hardest on those least able to bear them – in this case individual landowners/occupiers in the Hawke’s Bay region.

Table 1: High level steps and costs of consent process

Stage	Preparing application	Processing application	Hearing	Decision Issued
Steps and costs and time estimates	<ul style="list-style-type: none"> Gathering information, choosing and employing technical resources 	<ul style="list-style-type: none"> Council processing staff time, depending on scale, notification 	<ul style="list-style-type: none"> Notified for 20 working days for submissions to be made. 	<ul style="list-style-type: none"> Can be appealed by submitters.
	<ul style="list-style-type: none"> Time estimated between 1 and 6 months 	<ul style="list-style-type: none"> Time estimated between 2 and 12 months, depending on scale and volume received - council have limited resources to process consents. Timeframes are compounded by the volume received. Depending on the amount of submitters, hearings can range between 1 day and weeks. After the hearing, the commissioners make their decision. 	<ul style="list-style-type: none"> Environment Court time and cost. 	
	<ul style="list-style-type: none"> Costs estimated between \$3,000 and \$30,000 	<ul style="list-style-type: none"> Costs estimated between \$3,000 to \$80,000 	<ul style="list-style-type: none"> Ongoing compliance and monitoring costs. 	

- Major factors are impacting on the ability of rural landowners / occupiers to undertake rural recovery works including the unprecedented scale of damage across the Hawke’s Bay region. This has significant financial repercussions on individual rural landowners/occupiers, who are struggling to maintain profitability levels necessary to keep their farms productive, and on top of that to afford contractors with specialised skills and machinery to carry out necessary recovery works. The region-wide scale of the damage exacerbates these challenges, and the current resource consent process adds further time and cost, as well as uncertainty, delaying recovery. Removing these procedural barriers could expedite the recovery process and help restore the rural community’s economic stability more swiftly.

9. The financial impacts are significant for the rural community in Hawke's Bay, with more than one half of landowners estimating their own costs of NIWE recovery works to be over \$100,000. Officials have strong anecdotal evidence that the cost of consenting will be a significant barrier if standard RMA processes are used. In many cases it will equal or exceed the cost of the actual recovery works as the RMA consenting processes do not necessarily scale up or down depending on the cost of works. Rather they are tied to the activity classification and rules in the regional or district plan, or national environmental standards. This may mean quite small-scale works or may invoke significant consent application costs where non-compliance with a plan rule occurs.
10. For example, officials were informed one landowner in Tararua was quoted \$60,000 for preparation and processing of resource consent application alone. Aside from the inefficiencies of resources that could otherwise be deployed directly on recovery works going into consent processes, the financial stress over such a long period of time is leading to significant mental health pressure on farmers who are feeling extremely fatigued. The social cost of the ongoing recovery on the rural community in Hawke's Bay is significant.
11. The resourcing needs already placed on the Hawke's Bay local authorities is significant. Without regulatory relief there is likely to be a significant increase in consent application processing, compliance, monitoring and enforcement work. This will place further pressure on local authority resources which are already stretched.
12. Future severe weather events pose a risk to these areas. Completing recovery works before any future event is crucial to ensure severe impacts do not exacerbate existing issues. With rural recovery as yet incomplete in Hawke's Bay, resilience in these areas is currently low, necessitating ongoing support to recover from previous events and bolster resilience.

Key features and objectives of the regulatory system currently in place

13. The RMA promotes the sustainable management of natural and physical resources and sets rules and requirements to manage activities in the natural and built environment. Decisions made under the RMA are usually the responsibility of regional and district/city local authorities, through regional policy statements, regional and district plans, and resource consents. Consents for the rural recovery works (see Appendix B) are required as Discretionary and Non-Complying activities under the Regional Plan, various District Plans, and the National Environmental Standards for Freshwater (NESF). The timeframes and cost estimates of this process are depicted in Table 1.
14. 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:
 - a. Amend the SWELA timeframes for RMA s331A-331E by introducing similar provisions to those in s331A-331E until 31 December 2025
 - b. Further amendments to the RMA emergency provisions
 - c. Global consent
 - d. Schedule 1 Plan Change
 - e. The new Fast Track Bill approval process

- f. Fast-track consenting pathway (retained from NBEA under the NBEA Repeal Act 2023).

Key legislation of relevance

15. In the immediate aftermath of the NIWE, the SWELA was passed into law on 20 March 2023 to support the immediate recovery and rebuild. It is to be repealed in October 2024. It was shortly followed by the SWERLA which provided for OICs to be made, to be repealed in 2028.
16. SWELA introduced a permitted activity regime for rural landowners / occupiers by creating sections 331A-331E to the RMA which repealed on 1 April 2024. It allowed rural landowners and occupiers to undertake emergency works on their properties immediately following the severe weather events as a permitted activity. It applied to the Auckland Council, Bay of Plenty Regional Council, Carterton District Council, Hawke's Bay Regional Council, Manawatū District Council, Masterton District Council, Northland Regional Council, Rangitikei District Council, South Wairarapa District Council, Tararua District Council and Waikato Regional Council.
17. The SWELA rural emergency works regime has not been fully implemented as Parliament intended it would be – instead, few people were able to receive the benefit of it. Ninety-four percent of respondents to the HBRRA rural recovery progress survey still have recovery works to complete, having not been able to utilise the permitted activity regime under SWELA before its expiry due to finance, availability of contractors and extended wet weather conditions. The HBRRA and the HBRC asked the Minister for the Environment to extend the regime under SWELA as, despite the emergency being over, there are ongoing recovery activities to be undertaken.
18. The SWERLA, 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.
19. The SWERLA also enables other legislation to operate more flexibly to support recovery. This is achieved via OICs that modify other legislation, relieving those affected by the severe weather events from certain legislative requirements. Modifications are also permitted where necessary to enable prompt action for an efficient and timely recovery. The SWERLA places restrictions on any OIC made under it, including the requirement that OICs must be necessary or desirable for the purposes of the SWERLA.

What is the policy problem or opportunity?

The nature, scope and scale of the problem

20. 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 Hawke's Bay, over 10,000 hectares of horticultural land were damaged, production losses were estimated at \$230 million, and over 120 bridges were damaged or destroyed. Many rural areas are still unsafe to inhabit.

21. Until the cyclone, the Hawke's Bay region had been surpassing the national economy for several years, fuelled by robust horticulture, agriculture and viticulture sectors along with tourism and a booming construction industry. The recovery is ongoing, but rural landowners face significant challenges in completing necessary recovery works due to the scale of the damage, the complex and costly resource consent processes, financial burdens, and insufficient support. Delays to the rural recovery works will mean that the negative effects of the cyclone on the economy and rural community will continue for longer.

Who is affected by this issue?

22. Rural landowners and occupiers face substantial challenges in completing necessary recovery works to return land to pre-NIWE conditions. For them, the urgency lies in restoring their land and resuming normal operations to alleviate financial strain and rebuild their communities. However, they are operating under less profitable conditions to normal given the unprecedented scale of the damage. Many are struggling to make ends meet economically, finding it difficult to finance recovery within one financial year after covering basic operating expenses under poor farming conditions. The situation is further complicated by the need to divert some of their capacity towards recovery works, especially when these involve complex and costly resource consent processes.
23. Local authorities, such as the HBRC, are tasked with efficiently managing the recovery process and supporting affected communities. However, stretched resources and increased workload due to the region wide damage sustained from NIWE and trying to carry out recovery in addition to business as usual (BAU) have strained their capacity. This will become further strained if required to process and monitor the volume of resource consents that would be required under the status quo RMA framework for rural recovery works. Without support, the processing times will become longer than usual given the finite capacity of local authority staff.
24. In early 2024, the HBRRA and Hawke's Bay Regional Council (HBRC) undertook a survey of rural landowners (with properties over 20 hectares (over 1500 farms in Hawke's Bay over 20ha)) with over 200 responses received, the majority of respondents being from sheep and beef farmers, and the majority of respondents being located in the south of the region. The survey sought to understand progress towards rural recovery one year on from the severe weather events.
25. In previous related consultation, the original permitted activity regime for rural emergency works was created through primary legislation (SWELA) passed just after the cyclones. This involved a short select committee process where people were able to submit. The Department for the Prime Minister and Cabinet (DPMC) was the lead agency developing that primary legislation, with MfE as part of the group of agencies who supported the work.
26. The HBRRA survey questions also covered financial impact, insurance cover and degree of increased preparedness in the future. For more than one half of farmers the financial impact of these events is over \$100,000, with almost three quarters of respondents stating they intend to take future action to increase resilience. Insurance cover was identified as a significant factor. Although more than two thirds of respondents were insured, of these 60% estimated their insurance is likely to cover less than 20% of the damage incurred and only 14% estimated they had cover for more than 50% of the damage incurred.

27. While insurance was identified as a significant factor in managing the financial impact of these events, it is not a comprehensive solution on its own. It is likely the respondent's estimates did not factor in the additional costs required to obtain resource consent for the recovery works, which are necessary to meet regulatory requirements under the RMA. This highlights the need for interventions beyond insurance, such as the proposed OIC.

What objectives are sought in relation to the policy problem?

28. The objective is for a locally led, central government supported approach that enables rural recovery works to be undertaken as permitted activities, where they comply with permitted activity standards. This will mean:
 - a. People and communities in the Hawke's Bay region can recover earlier from the effects of Cyclone Gabrielle.
 - b. The significant social and economic costs of response and recovery from the severe weather events are reduced at an earlier stage than would be possible under the standard RMA consenting pathway in the rural community. This will include lower costs overall from the status quo.
 - c. The significant pressures on council capacity to process resource consents under the status quo will be removed.
29. 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.
30. The intended outcome is for an OIC, made under the SWERLA, that provides for permitted rural recovery works, enabling rural landowners / occupiers to begin in spring 2024 until December 2025, enabling two full springs, one summer and autumn seasons to complete works.

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

Focus of this interim Regulatory Impact Statement

31. This interim RIS discusses options for addressing rural community cyclone recovery, considers key benefits and assesses whether there are any risks with the preferred option. The aim of the analysis is to recognise high-level costs and benefits and does not monetise the costs or benefits due to interim status of this RIS. Constraints on the assessment for the full RIS are likely to include the significant variability in costs associated with site remediation. Not all sites were affected equally, and the scale of damage and required remediation work differ widely among the over 1500 affected rural properties throughout the Hawke's Bay. Resource consent costs alone can range from \$6,000 to \$110,000 or more, influenced by factors such as the need for input from engineers or planners and the choice of technical service providers, whose fees can vary substantially. Given these variables and assumptions, accurately estimating costs is extremely challenging.

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

32. We have used the following criteria to compare the different options. The criteria are equally weighted.

- a. **Expediency** – the ability of the option to achieve the outcome sought in the quickest timeframe.
- b. **Cost** – the ability of the option to achieve the outcome sought with the lowest financial cost.
- c. **Effectiveness** – the ability of the option to support cyclone recovery in the rural community.
- d. **Capacity constraints** – the ability of the option to reduce strain on local authority capacity.
- e. **Uphold Crown obligations under Te Tiriti o Waitangi** – the ability of the option to honour the Treaty and uphold Treaty settlements and other arrangements.
- f. **Manage risks** – the potential of the option to result in unintended consequences.

What scope will options be considered within?

33. All the options are limited to RMA processes (as SWERLA provides MfE with an ability to develop an OIC that exempts specified groups from the provisions of the RMA). The options do not remove or alter any requirements to obtain consents or authorisations under other legislation. There are no feasible non-regulatory options available, as it is considered desirable from a policy perspective that activities in scope of the RMA planning regime should be authorised (either by RMA plans or an OIC).

What options are being considered?

Option One – Status Quo

34. The status quo provides for an RMA consenting regime. This has been developed to promote sustainable management. The RMA contains a set of standard provisions to enable emergency works or to take preventative or remedial measures when immediate action is required. These provisions are largely appropriate for responding to smaller events and emergencies. However, they are not sufficient for larger emergency events (such as the Christchurch and Kaikoura Earthquakes and the 2023 North Island severe weather events).
35. Without intervention the majority of the Hawke's Bay rural landowners / occupiers will require resource consent to return their land to pre – NIWE conditions. As aforementioned, there are over 1,500 rural properties over 20ha in the Hawke's Bay, and as shown in Appendix A, the cyclone damage has been region wide. The HBRRA survey indicated that 98% of respondents were affected by the NIWE. This can be extrapolated to estimate that there are over 1,000 rural properties which require recovery works to return to BAU. As shown in Appendix B, the majority of these works will require resource consent as discretionary or non-complying activities under the status quo RMA consenting regime.
36. As per Table 1, the timeframes for obtaining consents can be between 3-18 months, not including Environment Court if the decision is appealed. This can cost the applicant between \$6,000 and \$110,000 for the application process. Then once relevant consents are obtained, the rural landowner/occupier then needs to carry out the works themselves.

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37. The volume of consents would overwhelm the capacity of the local authorities staff to process on top of BAU work, and the local authorities do not have the funds available to outsource the processing of this volume of consents to contractors. The corollary of this is that the timeframes for recovery under the status quo for the region would take potentially 3 to 5 years.
38. The status quo timeframes and costs to rural landowners and occupiers would be likely to undermine financial stability in the rural sector. This could have serious impacts on the Hawke's Bay rural community's ongoing social and economic recovery.

Option Two – Rural Recovery Works Order in Council

39. This option is an exemption to the RMA that would be in place until 31 December 2025. This would enable a specified list of rural recovery works that would otherwise require resource consent to be undertaken as a permitted activity, where the user meets OIC notification requirements (to councils and where relevant iwi in advance of works) and complies with the permitted activity standards.
40. Rural recovery works could include:
 - a. Works in riverbeds to return to a previous alignment and diverting water to return to its pre-existing channel or course
 - b. repair, modification, extension or replacement of pre-existing river crossings, roading and tracks, including associated earthworks, soil disturbance, vegetation clearance and discharges
 - c. temporary diversion of water to undertake repair or replacement works within the bed of a river
 - d. discharge of clean fill within 20m of a river
 - e. disturbance of the bed of a river from removal of cyclone related debris, wood material and silt
 - f. earthworks and soil disturbance to remove silt deposition or reinstate erosion and the removal of excess silt/earth off site.
41. The specifics of what works would be included and the definitions to ensure they cover only recovery activities, not BAU works, are still being drafted for this OIC and will be informed by the forthcoming public engagement process.

Option 3 – Amend SWELA timeframes for RMA by introducing similar provisions to those that were in s331A-331E

42. In the immediate aftermath of the NIWE, the SWELA was passed into law on 20 March 2023 to support the immediate recovery and rebuild. It is an omnibus Act that made changes to a number of existing laws including the RMA. Specifically, SWELA introduced a permitted activity regime for rural landowners / occupiers by inserting sections 331A-331E in the RMA.
43. The permitted activity regime was designed to help rural landowners and occupiers to undertake activities on their properties immediately following NIWE without the need to apply for resource consent, providing certainty and process efficiencies. These activities included the removal of silt, clearing slips and rebuilding of smaller structures like retaining walls, culverts and bridges. Tests and safeguards in the regime included containing significant adverse effects within the site boundaries, notifying the council of the activity (within 60 working days of works starting), and a requirement to obtain permission from relevant iwi or hapū if located on or impacting culturally significant

land. This provided the rural community the ability to continue with their recovery from NIWE whilst notifying relevant councils of the works for potential monitoring and enforcement purposes.

44. The relevant sections of SWELA were repealed on the close of 1 April 2024. Option 3 would see SWELA amended via new primary legislation to introduce similar provisions to those under s331A-331E with a repeal date of 31 December 2025¹.

Option 4 – Further amendments to RMA emergency provisions

45. As part of its work on replacement legislation to the RMA, MfE is exploring policy proposals for amendments to RMA emergency provisions (below) that could assist with rural recovery post severe weather events:
- a. Replicate the Natural and Built Environment Act 2023 (NBEA) s796 power, to make Orders in Council, into the RMA, to help respond to and recover from emergency events. The NBEA was repealed in December 2023.
 - b. Add additional powers (beyond those in s796) to allow the extension of timeframes for lodgement of retrospective consent for emergency works under s330(2).
46. Under these proposals the use of the power would be contingent on the declaration of a state of national or local emergency under the Civil Defence Emergency Management Act 2002 (CDEMA) however orders may continue to be created and apply after the declaration ceases for up to three years.
47. Option 4 is an ongoing body of MfE work addressing amendments to RMA emergency provisions (primary legislation) to allow for specific powers in emergency and recovery situations. This option is assessed as to whether it would be appropriate to respond to the policy issue of rural recovery post NIWE in the Hawke's Bay region.

Option 5 – Global consents

48. Global consents are more typically used and effective where there are works for a single issue (such as water take) and where the consent holder represents all the landowners/occupiers and/or is responsible for carrying out the work on their behalf. For rural recovery works, there is a variety of works required, with activities involving multiple (100s-1000s) of properties and several local authorities. This option requires agreement from the landowners/occupiers involved for their property to be subject to one consent.
49. The process of developing and making a decision on a global consent are typically longer than average and require considerable effort to coordinate across the many stakeholders, including iwi, hapu, Māori, local community, technical experts and local authorities. The properties are likely to be subject to different district plan rules and objectives and zones, and with some properties potentially straddling planning overlays, zones, and districts. This option is extremely complex in practice to carry out.

¹ Refer: <https://legislation.govt.nz/act/public/2023/0004/latest/LMS822431.html>

Option 6 – Schedule 1 RMA plan change

50. This option has not been pursued yet due to the scale of the damage, the assumption that the SWELA's one year time limit would be sufficient, and the necessary allocation of council resources, which could be used to draft and process a plan change, to emergency response. As discussed above, various unanticipated factors prevented many landowners and occupiers from using the permitted activity regime in the SWELA.
51. Under this option plan changes are required across multiple RMA plans, which may be at varying stages. The standard Schedule 1 process of submissions and appeals provides opportunity for wider public participation, however a standard plan change process can be lengthy, with an average processing timeframe of two years to resolve hearings and appeals. This process is also costly for local authorities, landowners/occupiers and the public to participate in.
52. Option 6 cannot address all the necessary changes to RMA regulatory documents. An RMA plan change must comply with national environmental standards, and for this topic, the NESF is relevant, controlling works in proximity to wetlands. The RMA Schedule 1 Plan Change option cannot override national direction, and thus cannot promulgate changes to the NESF.
53. Plan changes for the purpose of emergency recovery may meet the criteria for Streamlined Plan change process (Schedule 1 Part 5), but still require multiple processes and take a longer time than other options, and has the same costs involved as for a usual Schedule 1 Plan Change.

Option 7 – Use the new Fast-Track Approvals Bill approval process

54. The Fast-Track Approvals 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(s) for referral assessment almost immediately upon enactment.
55. Applications will be assessed against a set of criteria by the relevant Minister (with assistance from relevant agencies), to determine their benefits for our economy and environment. As activities that will support recovery from natural hazards, rural recovery works are eligible. However, the eligibility criteria also include, at Clause 17(2)(a), that consideration is given to 'whether the project will have significant regional or local benefits'. Cumulatively as a global consent it is possible that the rural recovery works would meet this, but individually it would not meet the eligibility criteria. The eligibility criteria therefore means that the rural recovery works would need to be approached as a global consent in order to utilise this fast-track process.
56. 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.

57. 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.
58. When enacted it is likely the new fast-track process will remove the need for future Orders that modify RMA consenting processes. However, as this option is a Bill, it is difficult to assess with complete certainty the final shape and scope of the Act as it may relate to rural recovery works.

Option 8 – Fast-track consenting pathway (retained from NBEA under the NBEA Repeal Act 2023)

59. The Government has retained the fast-track consenting pathway from the now repealed Natural and Built Environment Act 2023 (NBEA)². This is an interim measure until a new, standalone fast-track consenting legislation comes into effect and enables the fast-track consenting of a list of eligible activities including housing development and infrastructure activities³. This is not a viable option as the rural recovery works are not included in the list of eligible activities.
60. Option 8 is therefore not a realistic possibility for addressing rural recovery works.

² Refer Schedule 1 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023

³ Refer Clause 14, Part 2 of Schedule 10 of the repealed NBEA for the list of activities eligible for the fast-track consenting process.

How do the options compare to the status quo?

	Option One – Status Quo	Option Two – Rural recovery works OIC <i>Preferred option</i>	Option Three - Amend SWELA timeframes for RMA by introducing similar provisions to those that were s331A-331E	Option Four - Further amendments to RMA emergency provisions	Option Five - Global consents	Option Six - Schedule 1 RMA plan change	Option Seven – Use the new Fast-Track Approvals Bill approval process
Expediency	<p>0</p> <p>Seeking a resource consent is an uncertain process, there is no assurance of outcome for the applicant. It is a time-consuming process, with approximately 3-18months from starting to decision, depending on the complexity and scale of the works required. This process is also costly for the applicant with costs ranging between \$6,000 and \$110,000 (costs vary depending on needs for expert input such as</p>	<p>++</p> <p>Will support rural recovery in the swiftest manner possible, with enactment in September 2024, until December 2025. This will provide time for most of the rural landowners and occupiers with land affected by the NIWE to undertake the recovery</p>	<p>-</p> <p>Will support recovery, but the timeframes to achieving this primary legislative change are too long for this policy response in that they will not be in force before 2025/26 which would result in similar if not worse delays to recovery than would be experienced under the status quo. Furthermore, the purpose of the legislative intent is no longer applicable, due to the 'emergency' phase being over. The need for</p>	<p>-</p> <p>Will support recovery, but the timeframes to achieving this primary legislative change are inappropriate for this policy response – in that it will not be in force until 2025/26, and thus delays to recovery would be similar if not worse than that experienced under the status quo. For this reason it is not an expedient option. Timeframes are expanded on under the 'effectiveness' discussion below.</p>	<p>--</p> <p>Seeking a resource consent is an uncertain process for the applicant (no assurance of outcome), and is a time-consuming process, with a complex global consent(s) covering such a variety of activities anticipated, across such a large geographical area and across 5 different local authorities, with 100s if not over 1000 individual property owners involved, in increase the time and uncertainty experienced by</p>	<p>--</p> <p>Sch 1 plan changes are uncertain processes, more so than the status quo as there is no assurance of outcome. It adds significant time from the status quo through requiring a lengthy timeframe for preparation (3-9months average) and processing (1-2 years average) of the proposed plan change time, which then requires a second step of implementation (which could involve some form of consent process depending on how it is approached). This</p>	<p>--</p> <p>The legislative process for the bill extends into mid-late 2024. It will speed up consenting faster than the status quo. The eligibility criteria means that the rural recovery works would likely need to be approached as a global consent, in that Clause 17(2)(a) requires that consideration is given to 'whether the project will have significant regional or local benefits'. Cumulatively as a global consent, it is possible that the rural recovery works would meet this, but</p>

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<p>engineering and planning professionals, and the differences in different consultant fees, as well as whether the applicant must pay for a hearing and independent panel of commissioners to process the application. The volume of consents required (approx. 1,000) significantly adds to the workload of council resources, which in turn increases processing time due to the finite amount of staff time. This status quo will result in 3-5yrs to obtain consent, and such a long term for recovery has ongoing impacts on</p>	<p>works to reinstate their land to a pre-cyclone condition, while not indefinitely suspending the NESF and regional and district plan rules and standards under the RMA. There are significant cost reductions for rural landowners / occupiers from the status quo consent process. There are</p>	<p>intervention has changed from emergency to recovery – because of this an Order is more appropriate. We note SWELA was very broadly drafted (as is appropriate for emergency primary legislation), but 15+ months on from the NIWE it is now more appropriate to respond to the specific policy problem with a targeted and specific order amending the RMA, with detailed list of activities and standards.</p>		<p>applicants significantly compared to the status quo, whilst the processing of the consent may have some benefits through the ability to cost save on council processing staff and time by pooling resources to process the global consent. The processing and monitoring of complex global resource consents places significant additional demands on the local authorities at a time when they are very stretched for resources.</p>	<p>process adds costs to the landowner / occupier to be involved in the plan change process (planning, engineer, legal experts, as well as their own time and expert time at hearings) from the status quo. Adds to workload of council resources, who are already strained. This delays the recovery process and has ongoing impacts on the community wellbeing and economy. The two step process of undergoing plan changes, then implementing the new system, adds significant time to the recovery process.</p>	<p>individually it would not meet the eligibility criteria. As discussed under Option 5 for Global consent, in a situation where all landowners and their variety of activities are applied for under one global consent there is significant logistical time delays to coordinate the volume of landowners and their various requirements, noting that there are potentially over 1000 affected rural properties. This adds approximately 6 months to the application preparation time simply through coordination of the</p>

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	the community wellbeing and economy. Additionally, the processing and monitoring of this large volume of resource consents places significant additional demands on the local authorities at a time when they are very stretched for resources.	significantly less resource consents required to be processed by council staff and pressures on them are reduced.					volume of affected individuals. This also requires significant financial investment on behalf of the rural landowners /occupiers through the need to employ consultants (planning, engineering, legal). Finally, as this option is a Bill, 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 expediency as we do not know the final shape and scope of the Act.
Cost	0	++	++	0	-	--	-

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	Costs for preparing and processing consents under the status quo remain expensive, estimated between \$6,000 and \$110,000 per consent for the preparation and processing, depending on the scale of the damage.	Will remove regulatory red tape for rural landowners / occupiers and will facilitate recovery and enable rural recovery works to be undertaken without the need for a resource consent. This provides the rural landowner / occupier with greatly increased certainty over the status quo.	Will remove regulatory red tape to facilitate recovery. Costs for processing are removed for rural landowners / occupiers compared to status quo.	Will remove regulatory red tape to facilitate recovery. The outcome of what exactly could change for consenting for the types of activities required is unknown as this has not been drafted yet, and so this score is the same as status quo, neither a positive nor negative cost.	Adds costs through the need to employ technical experts and pay for costs recovery of council staff time, as well as payment for commissioner time. As a complex consent(s) these staff and commissioner costs will be significant, as well as increased costs of applicant technical expertise.	Adds costs through the need to employ technical experts and pay for costs recovery of council staff time, as well as payment for commissioner time. As a complex process these staff and commissioner costs will be significant, as well as increased costs of applicant technical expertise. May exclude some rural landowners/occupiers who cannot afford to participate in the process.	Adds costs for rural landowners . occupiers through the need to employ technical experts and pay for costs recovery of commissioner time.

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		Will remove processing costs for rural landowners / occupiers compared to status quo.					
Effectiveness	0 Uncertain (no assurance of outcome for applicant), time-consuming (processing time), and costly (processing costs, consultant costs for applicant) for the rural landowner /occupier. Will eventually enable recovery activities. Existing RMA regime does not readily address major civil emergencies. The	++ Will remove regulatory red tape to facilitate recovery. This adds considerable certainty to the rural landowner /occupier that the works can be undertaken lawfully and swiftly. Has achievable timeframes	- Would support recovery, but the timeframes are inappropriate as achieving an amendment to primary legislation would be highly unlikely to be successful, as the legislative timetable for 2024 is full. MfE has already submitted legislative bids for Bills for this year, and the repeal of the rural emergency works regime was not	- Adds uncertainty to rural landowners /occupiers as there is no assurance of outcome. There is increased time delays to rural recovery through the legislative process. Will eventually enable recovery activities, but the timeframes are too long. There is no realistic potential that changes could be progressed as part of RM Bill 2 works,	- Is uncertain for rural landowners /occupiers (no assurance of outcome). Adds time (coordination of rural community, preparation of consent application, processing time), and costs (processing costs, consultant costs, including additional costs for attending hearings and paying for consultants to attend hearings) for rural	- Is uncertain for rural landowners /occupiers as there is no assurance of outcome. It adds time (preparation and processing and hearing time), and costs (processing and hearing costs (including additional costs to attend in person and to pay for consultants to attend in person)) for rural landowners/occupiers. Will eventually enable recovery	- Will remove regulatory red tape to facilitate recovery, with associated benefits for rural landowners (time) and council staff (not required to process applications). The process will involve approximately 12 months of processing time. Due to the eligibility criteria, the works would need to be applied for as a global consent to

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	<p>existing emergency provisions in RMA do not cover the recovery period that occurs after an emergency, which can last for several years. These limitations have resulted in the need for bespoke legislation, and subsequent orders in council such as under the SWERLA to be developed to assist in response and recovery for large scale events such as Christchurch and Kaikoura Earthquakes and the 2023 NIWE. Requires significant time from council resourcing to process the 100s-</p>	<p>that will provide support to rural community swiftly. Will remove regulatory requirements for councils and free up council processing and monitoring staff who are already busy with BAU.</p>	<p>brought to our attention early enough to request time on the legislative programme for this. The timeframes therefore would be delayed by more than a year until Bills for 2025 are available. By this stage, SWELA will have been entirely repealed.</p>	<p>as the final scope of RM Bill 2 has been confirmed already and there was not sufficient time to include this proposal within that scope.</p>	<p>landowners/occupiers. Will eventually enable recovery activities, but the timeframes are too long. A Global Consent would require significant coordination across the region to gain agreement of all the individual rural landowners /occupiers to be party to the consent, the process for which is estimated to take 3-6months. The processing of the application is likewise complex due to the region-wide scale, and will likely take 6-12months. There is potential to exclude persons who do not wish to</p>	<p>activities, but the timeframes are too long – a standard process for a schedule 1 plan change can take 12months to 2 years, and then afterwards requires the implementation step, thus significantly delaying recovery comparatively to the status quo. Furthermore, the RMA Schedule 1 Plan Change option cannot override national direction, and thus cannot promulgate changes to the NESF. Many activities will still require consent as discretionary activities.</p>	<p>meet the requirements of Clause 17(2)(a). This may exclude some rural landowners /occupiers who do not wish to proceed on a global basis. Global consent under this option will significantly increase complexity, and increase time for preparation and processing of consent. Furthermore, as this option is a Bill, 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</p>

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	1000 anticipated applications, at a time where council staff are already strained.				<p>approach the recovery works through a global consent process, or who do not have the funds to contribute to the process financially, thus limiting this options' effectiveness.</p> <p>Given the complexity of this application and the complexity of processing, this option adds strain to council resourcing during processing.</p>	<p>This option would be council led, and require significant coordination across the 5 local authorities to achieve a combined plan change that slots into each plan without undermining the integrity of any of them. Given the complexity of process and the many council resources that would be required (planners, engineers, monitoring and enforcement, scientists, infrastructure, administration), this option adds significant strain to council resourcing</p>	<p>effectiveness as we do not know the final shape and scope of the Act.</p>

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						over a long period of time (1-2yrs).	
Capacity constraints	0 Council resources, already strained under BAU, are placed under further strain with processing 100s possibly over 1,000 resource consents.	+ Removes regulatory red tape and so frees up council capacity to address BAU. The proposal will require some council staff time to receive and vet the notifications of intent. This is a much smaller workload than the status quo.	+ Removes regulatory red tape and so frees up council capacity to address BAU. The proposal will require some council staff time to receive and vet the notifications of intent. This is a much smaller workload than the status quo.	+ Removes regulatory red tape and so frees up council capacity to address BAU.	-- The processing and monitoring of a complex resource consent(s) places significant additional demands on the local authorities at a time when they are very stretched for resources.	-- The preparation and processing of a plan change and the coordination required across the region and the different plans (regional and district) places significant additional demands on the local authorities at a time when they are very stretched for resources.	+ Removes regulatory red tape and is processed by an Expert Panel of commissioners not council, and so frees up council capacity to address BAU.
Treaty	0	0	0	0	0	0	0

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	Meets expectations/obligations	Requirement to notify in advance of works to any relevant iwi/Māori hapu, with a request for written permission, should meet obligations. The short consultation period can still meet treaty obligations if it ensures intensive, focused engagement and utilises technology for broad-based participation, thereby	Meets expectations/obligations	Meets expectations/obligations	Meets expectations/obligations	Meets expectations/obligations	Meets expectations/obligations

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		fulfilling the core principles of inclusivity, transparency, and meaningful input. Additionally, clear communication and prior preparation can enhance the effectiveness of the consultation within a limited timeframe.					
Manage Risks	0 Will manage environmental risks. Will increase risk of damage/loss of life in future severe weather events due	0 May increase environmental risks from non-compliance.	0 May increase environmental risks from non-compliance. The notification	0 Will manage environmental risks. Will increase risk of damage/loss of life in future severe weather events due	- Will manage environmental risks. Will increase risk of damage/loss of life in future severe weather events due	- Will manage environmental risks. Will increase risk of damage/loss of life in future severe weather events due	- Will manage environmental risks. This option also raises an equity issue if some rural landowners

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	to delayed recovery and low resilience.	The notification requirement and targeted scope of activities should mitigate this risk.	requirement should mitigate this risk. Will increase risk of damage/loss of life in future severe weather events due to delayed recovery and low resilience.	to delayed recovery and low resilience.	to delayed recovery and low resilience. May exclude some rural landowners /occupiers who do not wish to approach the recovery works through a global consent process, or who do not have the funds to contribute to the process financially.	to delayed recovery and low resilience. May exclude some rural landowners /occupiers who do not have the funds to contribute to the process financially, raising an equity issue.	occupiers were to be selected for fast track and others not. There are also unknown risks of this option as this option is a Bill, 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 what unknown risks will be as we do not know the final shape and scope of the Act.
Overall assessment	0	+	-	-	--	--	-

Key for qualitative judgements:

- ++** much better than doing nothing/the status quo
- +** better than doing nothing/the status quo
- 0** about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

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

61. Option 2 - Rural recovery works OIC, is the preferred option which will meet the policy objectives and deliver the highest net benefits. This option is the agency's preferred option. It presents notable advantages over the status quo and other proposed options. Specifically, the Rural Recovery Works OIC excels in expediency and cost-effectiveness, receiving the highest ratings in these categories. By swiftly enacting measures to support rural recovery, this option minimises delays in the restoration process while mitigating financial burdens for affected landowners and occupiers. Moreover, it achieves a positive overall assessment, indicating its superiority in delivering net benefits compared to the alternatives.
62. In contrast, other options, such as amending legislation or implementing global consents, demonstrate shortcomings in expediency, cost, and overall effectiveness, rendering them less favourable choices. The standard RMA resource consent process and other options under it (5 and 6) are process heavy and are not set up for addressing the unprecedented scale of damage and recovery as a result of the NIWE. In addition, the rural recovery works are unable to fit the eligibility criteria for entry into the RMA's fast-track consenting process.
63. The new Fast-Track Bill approval process (Option 7) has some benefits in expediency on paper. However, as it is currently a Bill and not an Act, the final outcome is uncertain. Therefore, it is difficult to accurately assess its ability to expedite recovery, potential risks, or if the rural recovery works will meet the eligibility criteria, as we do not know the final shape and scope of the Act until its enactment.
64. We note the existing RMA regime does not readily address major civil emergencies. The RMA contains a set of standard provisions to enable emergency works or to take preventative or remedial measures when immediate action is required. These provisions are largely appropriate for responding to smaller events and emergencies. However, they are not sufficient for larger emergency events (such as the Christchurch and Kaikoura Earthquakes and the 2023 North Island severe weather events).
65. The existing RMA emergency provisions also do not cover the recovery period that occurs after an emergency, which can last for several years. These limitations have resulted in the need for bespoke legislation, and subsequent orders in council such as under the SWERLA to be developed to assist in response and recovery for each of the events mentioned above.
66. Therefore, the Rural Recovery Works OIC is the most viable solution, offering tangible improvements and demonstrating a commitment to addressing the challenges posed by the recovery process following the natural disaster.

What are the marginal costs and benefits of the option?

67. 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). The alternative options received net disadvantages in the Multi Criteria Assessment above, due to the effectiveness of their respective abilities to provide regulatory relief

in an appropriate timeframe to assist with rural recovery in the Hawke’s Bay, and therefore the RMA status quo would be the preferred option in absence of an OIC.

68. An explanation of low, medium and high impact is given below:
- a. Low impact: The difference between the impact from the OIC pathway and the RMA pathway are expected to be nil or negligible.
 - b. Medium impact: There is an expected difference between the impact from the OIC pathway and the RMA pathway, but this difference is expected to be not substantial.
 - c. High Impact: The difference between the impact from the OIC pathway and the RMA pathway are expected to be substantial (higher or lower).
69. In the table, impacts are described as one-off, or ongoing. One-off impacts will normally not last beyond a specific stage in the recovery works. Ongoing impacts are longer, may extend over several years, and may generate a variety of other impacts that are not anticipated here.

Affected groups	Comment	Impact <i>Non-monetised impacts:</i> - Cost: low, medium, high - Benefit: low, medium, high - No impact	Evidence Certainty <i>High, medium, or low</i>
Additional costs of the preferred option compared to taking no action			
Rural community /Residents	<p>Under SWELA the permitted activity regime for emergency works was not limited in the way proposed by this OIC (proposed to have a limited scope of Permitted activities and new standards required to meet for environmental management) and so there could be an equity issue between the rural landowners/occupiers who utilised SWELA and had a larger scope of activities, and those who will use the OIC after enactment.</p> <p>However, if no action is taken, then rural landowners/occupiers may face additional costs and risk if they</p>	Low (on-going until revocation)	Medium

	undertake work without the OIC in place as resource consents will be required.		
Rural community /Residents	<p>The proposed OIC will make some rural recovery works permitted, with a specified scope and permitted activity standards.</p> <p>As the SWELA permitted activities and these were not limited in these ways, there is potential that potential users will misinterpret the OIC and carry out activities anyway, without providing proper notification to council and potentially carrying out activities that could be harmful to the environment.</p>	High (one-off)	Medium
Local government	<p>The proposed OIC will include a process where the Order users will send notification to council of their intent to utilise the Order. The council will then have to check the notifications to ensure that the proposal includes only activities on the permitted activity list, and complies with the permitted activity standards.</p> <p>This proposed OIC does not therefore completely remove all consent processing requirements from council staff, but minimises them.</p>	Medium (on-going until revocation)	High
Iwi/Hapu/Māori	The proposal removes the right to object or lodge RMA appeals on consents, as the consents are to	No impact	

	<p>become permitted activities (where they meet the permitted standards) that would otherwise be discretionary activities.</p> <p>However, where the activities may impact on or are within areas of cultural significance, the landowner/occupier must notify in advance the relevant iwi/ hapu and must seek permission to undertake the works.</p> <p>If permission is not obtained, then the works cannot proceed under the OIC and a resource consent must be sought under standard processes.</p> <p>This ensures that there are no unintended impacts on culturally significant land.</p> <p>Nb. Iwi/hapu are also rural landowners/occupiers. Refer also to the rural community and residents rows above.</p>		
Residents who are not able to object or appeal the consents	As there is no capacity to object or lodge RMA appeals under the OIC as the activities will become permitted (where within scope), 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	High (potentially on-going)	High/Medium

	<p>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><i>High evidence certainty for no costs of objection through the permitted works status under the OIC.</i></p> <p><i>Medium evidence certainty for longer-term impacts of removal of that ability.</i></p>		
Non-monetised costs		<i>High</i>	
Additional benefits of the preferred option compared to taking no action			
Rural community /Residents	If the OIC enables the recovery 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	High (on-going)	High

	<p>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>		
	<p>The costs of consents for works are expected to be lower than if the standard RMA consenting pathway were used. The OIC replaces the standard consenting pathway with a permitted status where users notify council (and iwi where relevant) in advance of works and comply with permitted standards.</p>	High (one-off)	High
Local government	<p>The local government staff is anticipated to be under less pressure under the OIC than if the status quo standard RMA process applied, and permitted activities do not require the same processing as the discretionary activities would.</p>	High (on-going throughout recovery)	High
Iwi/Māori	<p>The proposed OIC will apply to Māori owned rural and Māori purpose zoned land, meaning that iwi/Māori are able to benefit from the OIC and undertake recovery works on land as permitted activities (where standards are met).</p>	High (on-going until revocation)	High
Non-monetised benefits		<i>High</i>	

Total costs and benefits

70. In the summary table above, it is apparent that the benefits of the OIC would outweigh the costs. This is because:
- a. The OIC will allow the recovery works to begin earlier than if the standard RMA consenting pathway were used. This earlier commencement means that the benefits of the recovery will be felt earlier by the rural community across the region, lowering the significant social and economic costs currently being experienced by the rural community in the Hawke's Bay.
 - b. The benefits of an earlier recovery outweigh the main cost of using the OIC - the lack of ability to object or appeal, and the risk of temporary adverse environmental effects from non-compliance.

Section 3: Delivering an option

How will the new arrangements be implemented?

71. This RIS is an interim report only. The final details of the OIC are not clear yet as no drafting has occurred. It is proposed that the OIC will be implemented through use of a robust communications and engagement strategy to inform the rural community in the Hawke's Bay of its enactment, and how it works. It is proposed to require users to indicate an intent to use the OIC to the relevant local authority, who can then check the proposal to ensure it is consistent with the permitted standards. It is proposed that the OIC's modification to the RMA should last until 31 December 2025. This will provide time for most of the rural landowners and occupiers with land affected by the NIWE to undertake the recovery works to reinstate their land to a pre-cyclone condition, while not indefinitely suspending the NESF and regional and district plan rules and standards under the RMA.
72. The OIC is not proposed to have retrospective effect.
73. There will be communications strategies and engagement plans coordinated between MfE and the HBRRA to ensure that the rural community are aware of the OIC and its parameters, to ensure their ability to implement the OIC when they have the capacity (time, funds, access to contractors).
74. Reviews of existing OICs created under SWERLA shows there is a risk that the notification requirement may be ignored and works carried out nonetheless. It is believed that a clear and comprehensive communications and engagement strategy, which specifies clearly the outcomes of non-compliance, will mitigate this risk.

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

Monitoring and evaluation

75. Monitoring of the activities will occur when required by the relevant council compliance staff. The OIC requires users to notify the council with their intent and scope of works, which allows councils to check in advance of works occurring that the activities are in scope of the permitted works and in accordance with the permitted standards and gives the council the opportunity to go out on site to monitor the works as they occur. The process of compliance monitoring involves carrying out inspections and using compliance approaches to promote behaviour change and incorporate best practice⁴.

Review of the Order in Council

76. It is proposed that the OIC requires a review 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.
77. 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)):
 - a. The order is necessary or desirable for one or more purposes of SWERLA

⁴ Regulation & Compliance | Hawke's Bay Regional Council (hbrc.govt.nz)

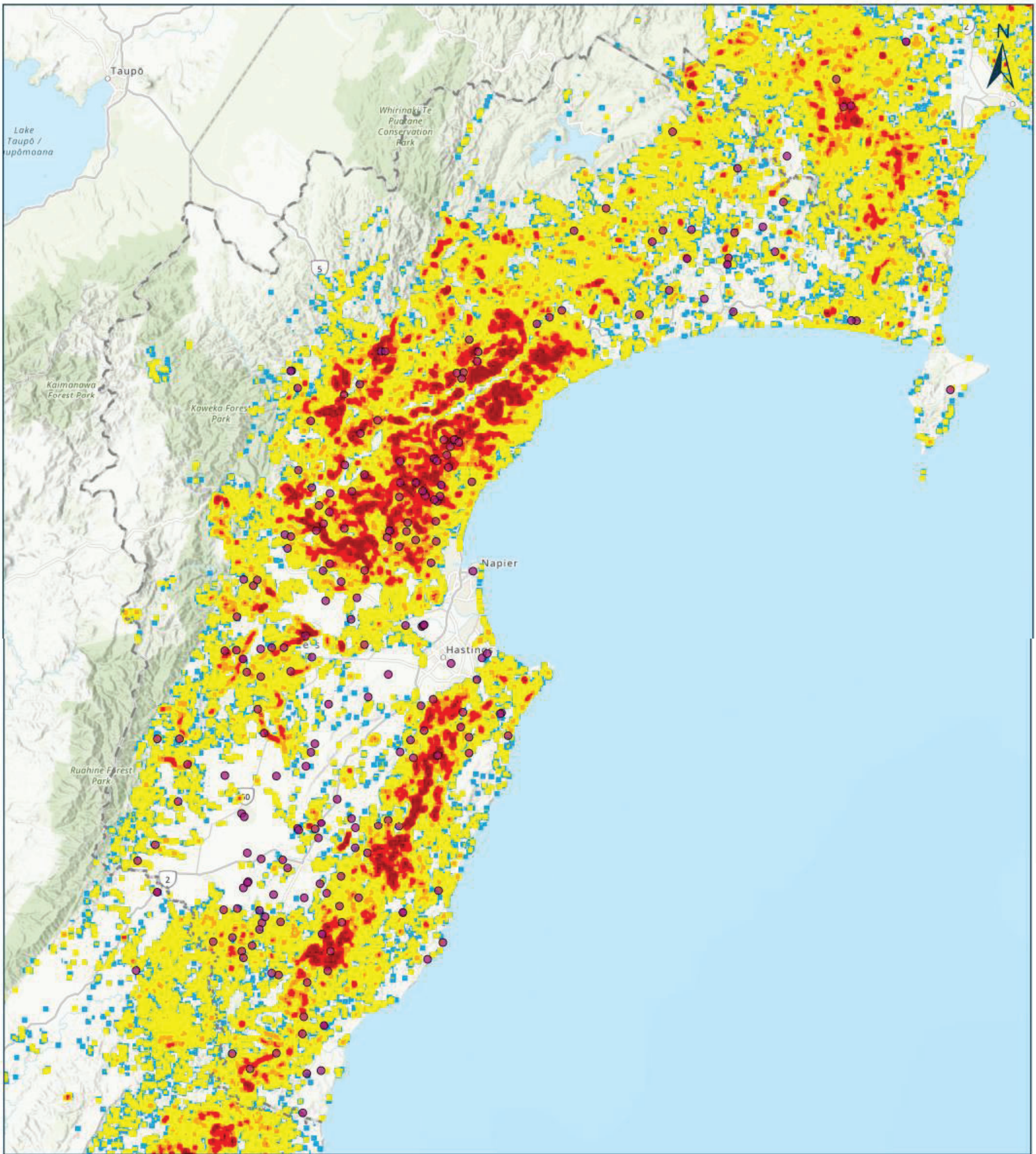
- b. the extent of the order is not broader (including geographically broader in application) than is reasonably necessary to address the matters that gave rise to the order.
- c. the order does not breach section 11⁵ of the Act
- d. the order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990.

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

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

⁵ Section 11 restricts the OIC from granting or modifying a requirement to release someone from custody or to have their detention reviewed, or from granting or modifying an exemption or restriction imposed by (for example) the New Zealand Bill of Rights Act 1990.

Appendix A: Hawkes Bay Location of Landslide Caused by Cyclone Gabrielle

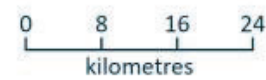


Hawkes Bay Rapid Landslide Density

LEGEND

- Cyclone Impact Survey Locations
- Landslide Density**
- 0 - 0.0003
- 0.0003 - 0.001
- 0.0011 - 0.025
- 0.025 - 0.05
- 0.05 - 0.1
- 0.11 - 0.9696

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Date: 8/04/2024
 Scale: 1:690,000 @ A3
 Reference Systems:
 NZTM | NZVD2016



Appendix B: Table showing types of activities identified by rural community with BAU regulatory framework that it would fall under

Nb. Abbreviations used are:

CHBDC Central Hawke's Bay District Council

DP District Plan

HBRC Hawke's Bay Regional Council

HDC Hastings District Council

NCC Napier City Council

OIC Order in Council

RP Regional Plan

RRA Hawke's Bay Regional Recovery Agency

WDC Wairoa District Council

Other regulations referred to:

NESF National Environmental Standard Freshwater

Stock exclusion OIC Resource Management (Stock Exclusion) Regulations 2020

Time extensions OIC Severe Weather Recovery (Resource Management – Time Extensions) Order 2023

Waste Management and Waste Minimisation OICs Severe Weather Emergency Recovery (Waste Management) Order 2023 / Severe Weather emergency Recovery (Waste Minimisation) Order 2023

Work requirement identified by rural community in RRA survey	National rules District Plan Rules and standards Nb. Rules are summarised once, then cross-referenced.	MfE comments / analysis
Track damage (92% respondents affected)	<p>Earthworks DP Earthworks for forestry activities are permitted in Hastings District Council (HDC) (27.1.5(c)). In HDC earthworks of 2000m³ per hectare of site in the Rural Zone (100m³ for Rural Residential, Tuki Tuki and Plains Production zones (27.1.6A)) per 12 month period are Permitted Activities. Earthworks that remove less than 25m³ per site (plains production zone) or 100m³ (all other rural) per site per 12 month period are Permitted Activities (EM3), which elevate to Discretionary Activities in the PPZ (EM10 and EM11) and to RDIS in all other zones (EM6).</p> <p>Under the Wairoa District Plan (WDC) the definition (and associated exclusions) of earthworks, earthwork activities in the rural and settlement zones to maintain farm tracks, tracks or roads, irrigation or land drainage or dam building are permitted activities, where they are further than 20m from the bank of a waterway. The remaining earthworks activities (clearing silt and erosion closer than 20m from a waterway) would require a Discretionary activity resource consent where in excess of 250m³ or 400m² (rural) (16.8.18, elevation under 16.7.2) and 300m³ and 150m² (settlement zone) (17.8.17, elevation 17.7.2) in area per site per 12 month period. Any land disturbance in any area identified as of significance to Māori is DIS (22.1.7).</p> <p>In Napier City Council (NCC) earthworks under 100m³ per hectare of site within a 12 month period is a permitted activity in most rural zones (52A.6, elevates to RDIS 52A.9). However, the removal of more than 25m³</p>	<p>Consents are likely required.</p> <p>Due to the scale of the earthworks anticipated across the region, recovery works for track damage will require discretionary resource consents in almost all the Districts in the Hawkes Bay.</p> <p>HDC - While landowners and occupiers in the Rural Zone may be able to carry out the necessary remedial earthworks for their recovery, if they want to remove that excess soil/silt off site they will require a discretionary activity Resource Consent. It is also understood that the 100m³ of permitted earthworks extent in the other rural zones will not be sufficient to carry out the necessary remedial works and Discretionary Activity consents will be required in these zones.</p> <p>WDC – while the works further than 20m from waterways are permitted, it is understood that there will be many earthworks activities, in particular removal of silt washed over sites from waterways, that will be within 20m of waterways.</p> <p>In CHBDC's district the Ancillary Rural Earthworks definition⁶ and associated permitted activity status (where compliant with standard environmental controls such as silt and sediment management, reinstatement of</p>

⁶ Ancillary Rural Earthworks means earthworks associated with normal agricultural and horticultural practices, such as:

- maintenance of drains, troughs and installation of their associated pipe networks, drilling bores and offtal pits, and burying of dead stock and plant waste (including material infected by unwanted organisms as declared by the Ministry of Primary Industries Chief Technical Officer or an emergency declared by the Minister under the Biosecurity Act 1993); and
- Maintenance of existing walking tracks, farm and forestry tracks, driveways, roads and accessways.

Work requirement identified by rural community in RRA survey	National rules District Plan Rules and standards Nb. Rules are summarised once, then cross-referenced.	MfE comments / analysis
	<p><i>offsite per 12 months period in Main Rural Zone is a Discretionary activity (52A.10.1) with 100m3 offsite for other rural zones (52A.10.2).</i></p> <p>Earthworks that may affect rivers and wetlands (RP Chapter 6) (NESF) <i>Under the RP, excavation within the bed of a waterway may not occur for more than 5 days and only 5m2 per day, where it elevates to DIS. Discharges to land within 20m of a waterbody is a Discretionary activity under Chapter 6 Rule 52. Excavations in river beds is a discretionary activity under Rule 69 Chapter 6.</i> <i>Under the NESF, activities Reg 50(2) allows for earthworks within 10m of wetland where complies with standards AND is for arable or horticultural land use. All other earthworks within 10m of wetland are Non-Complying activities under Reg 54.</i></p> <p>Diversion of water (RP chapter 6) (NESF) <i>Diversion within the bed of waterbody, or divert no more than 10% of flow (among other controls)(rule 56), elevates to Discretionary (rule 59).</i> <i>Reg 38(3) taking use damming diversion or discharge of water within or within 100m from a wetland PER for restoration/maintenance, scientific purposes (not farming). All other damming/diversions of water within 100m of wetland are Non-Complying activities under Reg 54.</i></p> <p>Culvert replacement (RP) (NESF) <i>Excavations in beds of waterways, removal of structures in beds of waterways, maintenance of structures in beds of waterways) (RP rules 56, 57, 64, 72, elevates to DIS under 59 and 69).</i> <i>The placement, alteration, extension or reconstruction of a culvert in the bed of any river or connected area is a permitted activity under the NESF regs 62 and 63 (standards reg 70) where information on location and design is provided to council within 20 days of works commencing. Elevates to discretionary under reg 71.</i></p> <p>Realigning streams (RP) <i>Diversion within the bed of waterbody, or divert no more than 10% of flow (among other controls)(rule 56), elevates to Discretionary (rule 59).</i></p>	<p>site etc.) means that for the Rural Zones in the Central Hawkes Bay District Plan (proposed, note still subject to appeals where activities are within landscape areas), the majority of the earthworks required to be undertaken for track damage and irrigation and stock water damage can be done so through a Permitted Activity status (EW-R2).</p> <p>For within NCC, as much of the earthworks would be removal of silt offsite, and as much of the area is Main Rural Zone, this means that most of the remedial works in rural Napier require a Discretionary Activity Resource Consent.</p> <p>Culvert replacements will require consents under the RP for excavation in beds of waterways, removal of structures in beds of waterways and / or maintenance of structures in beds of waterways, as well as a consent under the NESF reg 71.</p> <p>For realigning streams to their original channel/course where they have moved across a site and potentially across a farm track, this would require diversion of water consents under the RP as DIS activities, as well as DIS consent for works within beds of waterways under the RP.</p> <p>There are permitted regulations under the NESF for removing material (trees, debris, sediment) from wetlands and proximity to wetland, earthworks, and damming or diversions of water in proximity to wetlands (Reg 51), but only if the material was deposited as a result of a natural hazard AND it is causing or likely to cause an immediate hazard to people or property. As discussed throughout the vires and need v want templates, the immediate hazard to life and property after NIWE has passed and the region is transitioning into the medium to long term stage of recovery, after immediate danger has passed. This regulation could not therefore be utilised to address this policy issue.</p>
Erosion (88% respondents affected)	<p>Earthworks DP (as per track damage). <i>CHBDC allows 20000m3 per ha of site per 12months in General Rural Zone (GRUZ) (EW-S2), elevates to RDIS (EW-R2.2) and 1000m3 per ha of site per 12 months in the Rural Production Zone (RPROZ) and 500m3 per site per 12monhts in the Rural Lifestyle Zone (RLZ). Other usual standards apply.</i></p> <p>Earthworks that may affect rivers and wetlands (RP) (NESF)</p> <p>Culvert replacement (excavations in beds of waterways, removal of structures in beds of waterways, maintenance of structures in beds of waterways) (RP)</p> <p>Realigning streams (RP) <i>Diversion within the bed of waterbody, or divert no more than 10% of flow (among other controls)(rule 56), elevates to Discretionary (rule 59).</i></p>	<p>Consents are likely required.</p> <p>As per track damage above, noting that activities away from tracks or irrigation / stock water damages will require consent for earthworks under CHBDC as it will not fall under the Ancillary Earthworks exemption. However, 2000m3 per ha per site could be sufficient to allow for erosion and sediment recovery earthworks.</p>
Sediment (64% of respondents affected)	<p>Earthworks DP (as per track damage and for CHBDC per erosion)</p> <p>Excavations in beds of waterways (RP)</p> <p>Disturbance in proximity to wetlands (NESF)</p> <p>Diversion of water (RP) <i>Diversion within the bed of waterbody, or divert no more than 10% of flow (among other controls)(rule 56), elevates to Discretionary (rule 59).</i></p>	<p>Consents are likely required.</p> <p>As per track damage and erosion above.</p>

Work requirement identified by rural community in RRA survey	National rules District Plan Rules and standards Nb. Rules are summarised once, then cross-referenced.	MfE comments / analysis
	Culvert replacement (excavations in beds of waterways, removal of structures in beds of waterways, maintenance of structures in beds of waterways) (RP) Realigning streams (RP)	
Water supply/irrigation system damage (66% respondents affected)	Earthworks DP (as per track damage) Excavations in beds of waterways (RP) Diversion of water (RP) Realigning streams?	Consents may be required. Earthworks for water supply or irrigation system repairs are likely to be small scale and not require resource consent under District Plans. These may require discretionary activity consents under the regional plan for diversions of water or excavations in beds of waterways as well as removal or maintenance of structures in beds of waterways depending on the set up.
Stock water or access damage (65% respondents affected)	Earthworks DP (as per track damage) Excavations in beds of waterways (RP) Diversion of water (RP) Culvert replacement (excavations in beds of waterways, removal of structures in beds of waterways, maintenance of structures in beds of waterways) (RP) Realigning streams (RP)	Consents may be required. Similar to water supply and irrigation system damage. These may require discretionary activity consent under the regional plan for diversions of water or excavations in beds of waterways as well as removal or maintenance of structures in beds of waterways depending on the set up.
Dam damage/loss	Earthworks DP (rules as summarised in track damage). <i>Note that the WDC plan excludes dam building for farm and forestry activities from earthworks.</i> Excavations in beds of waterways (RP) Diversion of water (RP)	Consents are likely to be required. Depending on the scale of the damage to dams, there could be significant earthworks required which will require earthworks consents in the local territorial authority. Summaries on this as per track damage. This will require discretionary activity consents under the regional plan and district plans, for rural landowners across the region.
Issues with access around property (60% of respondents affected)	Earthworks DP Excavations in beds of waterways (RP) Diversion of water (RP) Culvert replacement (excavations in beds of waterways, removal of structures in beds of waterways, maintenance of structures in beds of waterways) (RP) Realigning streams (RP)	Consents are likely to be required. It is understood that many landowners /occupiers are still dealing with issues with access within their properties, which is directly impeding the ability to productively farm. This recovery activity will likely require earthworks consents (district plan and where in proximity to waterways, regional plan), potential for realigning streams which moved in the severe weather event back to their original course, which will require diversion and realigning stream, works in beds of waterways consents. This activity will also likely involve some culvert replacements, which will require consents for earthworks in proximity to streams, diversion of water, as well as excavation in beds of waterways, removal and maintenance of structures in beds of waterways consent. These will result in discretionary activity consents under the regional and district plans, for rural landowners across the region.
Sheds/barns/yards damage (33% of respondents affected)	Earthworks DP Excavations in beds of waterways (RP)	Consents are likely to be required. It is understood that some streams moved their courses during the severe weather events, and landowners are seeking in these situations to move the stream back to its original course. This could be a situation for

Work requirement identified by rural community in RRA survey	National rules District Plan Rules and standards Nb. Rules are summarised once, then cross-referenced.	MfE comments / analysis
	<p>Realigning streams (RP)</p> <p>Diversion of water (RP)</p>	<p>yard damage repairs. This would require discretionary activity resource consents for excavation in beds of waterways and diversion of water from HBRC.</p> <p>Nb. Sheds as accessory buildings may not require consent under many district plans, but building consent will be required for some of these structures.</p>
Wood waste/debris damage (29% of respondents affected)	<p>Discharge to air/discharge to land (RP)</p> <p>Excavations in beds of waterways (RP)</p>	<p>Consents are likely to be required (unless works are undertaken subject to the Waste Management and Waste Minimisation OICs).</p> <p>Depending on location, these types of activities will not require resource consent to remove from site and dispose at an approved facility due to the Waste Management and Waste Minimisation OICs. There may be cost barrier and capacity barrier to transport the material to one of these facilities.</p> <p>The burning of this material would require a consent under the Regional Plan for discharges to air as the Open Burning Order has been revoked, with potential for a permit to discharge to land if any of the waste has heavy metals etc in it (potential to cause site contamination and a risk to health).</p> <p>Where located in proximity to or within the bed of a stream or river this will likely require consent as a disturbance to bed of waterway to remove.</p> <p>The consents required will be discretionary activity resource consents from the HBRC.</p>
Issues with access to/from property (25% of respondents affected)	<p>Earthworks that may affect rivers and wetlands (RP)(NES)</p> <p>Diversion of water (RP)</p> <p>Culvert replacement (excavations in beds of waterways, removal of structures in beds of waterways, maintenance of structures in beds of waterways)(RP)</p>	<p>Consents are likely to be required.</p> <p>Most of the issues with access to the property will be managed via council roads at council cost. There may be some culvert repairs on private land required, at the boundary of the public road.</p> <p>These will require discretionary activity regional consents from HBRC.</p>
Fencing damage (98% respondents affected)	<p>n/a</p> <p>Stock Exclusion OIC and Tukituki rules: Tukituki River Catchment Plan Change 6 to HB regional plan. Rule TTle, f and g.</p>	<p>Most fencing activities will be permitted activities. Nb. Note there is a potential issue with the stock exclusion rules in the Tukituki catchment that may trigger the need for consents</p> <p>The scale of the loss of fencing is putting strain on the ability to farm productively as some paddocks have become impractical to farm (too large due to loss of fencing) or impossible to use due to access damage. This puts priority on farmers time to address the fencing damage in order to work more efficiently on the land, thus differing larger scale recovery projects due to lack of capacity to address BAU and fencing repairs and other recovery activities.</p> <p>Within the Tukituki catchment there are stock exclusion rules which have been in place since 2020. The Time extensions OIC applies to the stock exclusion OIC regulations (extension for compliance to 1 July 2025) and does not modify regional rules. The regional rules for stock exclusion in the Tukituki catchment were amended by a plan change. Thus landowner/occupiers in the Tukituki catchment (with properties over 4 hectares in area and for stock other than sheep) who have lost fencing are now faced with the need to get resource consent to allow the stock to go into the waterways until such time as they have the capacity to repair the fencing damage.</p>
Planting losses (64% respondents affected)	<p>n/a</p>	<p>Most replanting activities will be permitted activities if non-forestry.</p> <p>The lost planting will put these communities at increased risk in future events until replacement riparian planting can be put in place and matures. As with many recovery activities, it is the capacity to undertake the work that landowners / occupiers are struggling with, and this is adding to the speed of recovery overall.</p>