

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

Coversheet

Purpose of Document	
Decision sought:	This analysis will inform Cabinet decisions on the proposed Severe Weather Emergency Recovery (Auckland Flood Resilience Works) Order 2024
Advising agencies:	Ministry for the Environment
Proposing Ministers:	Hon Penny Simmonds, Minister for the Environment
Date finalised:	4 October 2024
Problem Definition	
<p>Following the Auckland Anniversary Weekend floods and Cyclone Gabrielle (the severe weather events) in January and February 2023, several locations across the Auckland region were identified where critical safety enhancements and improvements to the resilience of infrastructure specific to flood control and mitigation ('project works') are required. Two locations in the Auckland region (Harania and Te Ararata catchments) have been identified amongst the worst affected areas in Auckland with approximately 376 affected properties, including at least 56 properties where there is an intolerable risk to life (Category 2 or 3).</p> <p>The project works have been identified as a key action in Te Mahere Whakaroa mō Tāmaki Makaurau (the Tāmaki Makaurau Recovery Plan) and supported by the Making Space for Water programme of works. The works are covered by the Crown Funding Agreement between Auckland Council and the Crown and is funded in the Long-Term Plan.</p> <p>The key policy issue this proposal seeks to address is to ensure that affected homeowners in the catchments of Te Ararata and Harania are not left in situations of uncertainty of intolerable risk for prolonged periods of time. The project works would usually require a resource consent under the Resource Management Act 1991 (RMA). However, the pathway these consents would take is complex and is likely to take more than 12 months¹. This would have serious impact on people who own houses identified as Category 2 and 3 properties which have an intolerable risk to life from flooding and/or landslides in Auckland.</p> <p>Auckland Council have requested an Order in Council (OIC) to address and speed up the project works to support the protection of residential properties in the Harania and Te Ararata catchments in Māngere, South Auckland.</p>	

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

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

Executive Summary

Background

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

Progress towards recovery

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

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

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

Options considered

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

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

Preferred option

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

Impacts of the preferred option

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

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

Consultation

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

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

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

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

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

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

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

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

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

Limitations and Constraints on Analysis

Limitations on the problem definition or options considered

Timeframes

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

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

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

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

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

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

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

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

Consultation and data collection

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

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

Responsible Manager(s) (completed by relevant manager)



Dáire Queenan
Manager
Adaptation System
Ministry for the Environment

Quality Assurance (completed by QA panel)

Reviewing Agency: Ministry for the Environment

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

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

Section 1: Diagnosing the policy problem

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

Current state within which action is proposed (status quo)

Impacts of severe weather events in January and February 2023

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

Table 1 Residual risk from project works

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

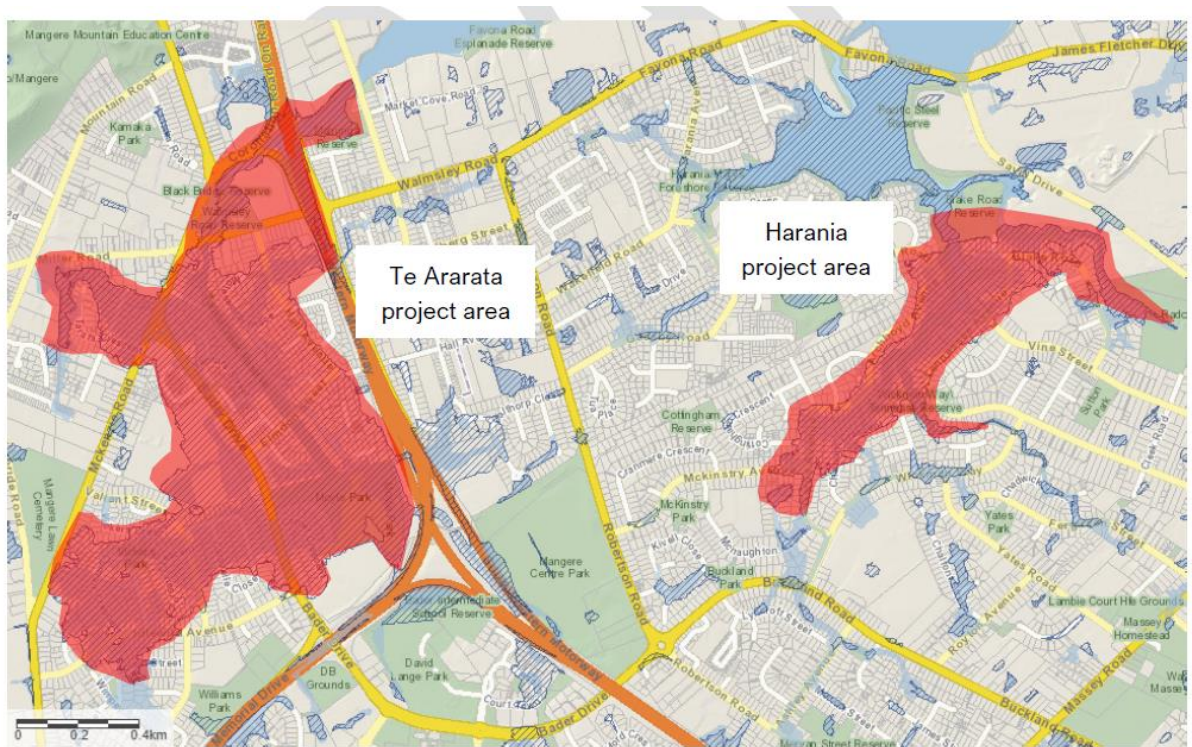


Figure 1 The proposed works aim to reduce the risk from significant flood prone areas of Māngere within the two catchment sites shown in red

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

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

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

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

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

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

Key features and objectives of the regulatory system currently in place

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

Key legislation of relevance

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

What is the policy problem or opportunity?

The nature, scope and scale of the problem

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

Who is affected by this issue?

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

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

What objectives are sought in relation to the policy problem?

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

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

Focus of this Regulatory Impact Statement

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

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

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

What scope will options be considered within?

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

What options are being considered?

Option 1 – Status Quo RMA consenting pathway

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

Option 2 – Auckland Council Flood Recovery Works Order in Council

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

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

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

Development of this option after consultation

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

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

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

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

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

c. notices of requirement for new designations

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

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

58. The Government has retained the fast-track consenting pathway from the now repealed Natural and Built Environment Act 2023 (NBA). This is an interim measure until a new, standalone fast-track consenting legislation comes into effect. The projects works are eligible activities² and may be consented under this pathway. The expected timeframes for this pathway is approximately 12 months.
59. As with the standard consenting pathway, there remains a high risk the planned delivery timeframes for the project works becoming earth moving season 2025/2026.

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

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

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

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

How do the options compare to the status quo?

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

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

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

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

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

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

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

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

What are the marginal costs and benefits of the option?

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

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

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

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

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

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

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

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

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

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

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

Section 3: Delivering an option

How will the new arrangements be implemented?

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

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

Monitoring and evaluation

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

Review of the Order in Council

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

- c. the order does not breach section 11³ of the SWERLA
- d. the order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990.

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

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

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

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

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

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