

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

## Coversheet

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

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

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

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

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

## Executive Summary

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

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

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

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

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

## Limitations and Constraints on Analysis

### Limitations on the problem definition or options considered

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

It is proposed that the OIC should be made under the Severe Weather Emergency Recovery Legislation Act 2023 (SWERLA), as this provides a mechanism for developing OICs that modify existing legislative processes and requirements to speed up recovery from the severe weather events of 2023. MfE has considerable experience of using the SWERLA to develop a range of OICs that are currently supporting recovery.

### Constraints on Analysis

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

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

s9(2)(a)

Ministry for the Environment

s9(2)(a)

15 May 2024

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

|                             |  |
|-----------------------------|--|
| Reviewing Agency:           | Ministry for the Environment   |
| Panel Assessment & Comment: | <p>A quality assurance panel with members from the Ministry for the Environment’s Regulatory Impact Analysis Team has reviewed the Severe Weather Emergency Recovery Legislation (Hawke’s Bay Flood Protection Works) Order Supplementary Analysis Report. The panel considers that it <b>meets</b> the Quality Assurance criteria.</p> <p>The QA panel notes that the Severe Weather Emergency Recovery Legislation (Hawke’s Bay Flood Protection Works) Order Supplementary Analysis Report meets the four quality assurance criteria set out by Treasury.</p> <p>The Supplementary Analysis Report is comprehensive, well-written and in response to a clear need, with risks and constraints clearly defined and discussed. The QA panel suggests that the document would benefit from a proofreading to ensure continuity in terms used, however, this is a minor suggestion.</p> |

## Section 1: Diagnosing the policy problem

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

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

#### Impacts of Cyclone Gabrielle

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

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

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

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

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

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

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

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

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

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

7. The status quo is that there is no Order in Council (OIC) in place. The standard process under the RMA would be used to obtain the relevant resource consents that are needed under the regional and district plans and national environmental standards<sup>6</sup>. This would miss the opportunity to undertake the flood works within a timescale that would enable earlier recovery from the severe weather events.
8. As seven residential locations were especially affected by the cyclone, slow consenting processes are a region-wide problem. A staff report from the Hawke's Bay Regional Council (HBRC) notes the implications of residential dwellings remaining in Category 2<sup>7</sup>:

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

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

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

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

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

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

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

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

14. The OIC will be made under the Severe Weather Emergency Recovery Legislation Act 2023 (SWERLA), which came into force on 12 April 2023 and expires on 31 March 2028. The purpose of the SWERLA is to assist communities and local authorities affected by the severe weather events to respond to, and recover from, the impacts of the severe weather events of 2023. It provides for planning, rebuilding, and making safety enhancements and improvements to the resilience of land and infrastructure.
15. The SWERLA also supports enabling other legislation to be relaxed or operate more flexibly to support recovery. It enables OICs to be made that modify other legislation, relieving those affected by the severe weather events from overly burdensome legislative requirements. Modifications are also permitted where necessary to enable

prompt action for an efficient and timely recovery. The SWERLA requires that OICs must be necessary or desirable for the purposes of the SWERLA.

16. Consents for the flood works are required under the RMA, which promotes the sustainable management of natural and physical resources and sets rules and requirements to manage activities. Decisions made under the RMA are usually the responsibility of regional and district/city councils, through regional policy statements, plans, and resource consents. Apart from the standard pathway for obtaining resource consents under the RMA, other pathways also exist (listed in **Appendix 1**).

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

**Orders in Council**

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

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

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

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

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

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

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

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

## What is the policy problem or opportunity?

- The policy problem is that there is no legislative option that would enable the flood works to begin by October 2024. MfE has reviewed all potential consenting pathways (including the retained fast-track consenting pathway from the now repealed Natural and Built Environment Act 2023 (NBA)) and has determined that a new, streamlined consenting pathway is needed, to ensure the works can begin, and be completed, without delays.
- The key reasons for consents needing to be secured at pace are:
  - The flood works are necessary to ensure residential land in the Hawke's Bay region identified as Category 2A or Category 2C can safely shift to Category 1. A significant number of residents are in limbo at present and there are significant social and economic impacts on the wider community as a result.
  - The flood works involve extensive construction, earthworks, stream realignments and new structures. These require long lead-in times to finalise options, complete engineering design, and to procure resource and confirm contracts. In places, works are limited to the standard construction season (ie, October to April) to

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

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



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

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

#### Who is affected by this issue?

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

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<sup>13</sup> Hawke's Bay Briefing to the Incoming Government, November 2023, HBRRA: [HB-BIM-Final-29-Nov-23.pdf \(hawkesbayrecovery.nz\)](https://www.hbrra.govt.nz/~/media/113476/hawkesbayrecovery.nz)

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

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

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

### Objectives

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

### Outcomes

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

### Targets

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

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

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

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

### What scope will options be considered within?

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

### What options were considered by Cabinet?

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

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

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

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

## Key features of the preferred option

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

**Assumptions**

36. We have assumed that the primary impact on the groups listed in the table below will be the time that is saved by using the OIC, and that the more time is saved, the higher the likely impact. An explanation of low, medium and high impact is given below:
  - Low impact: The difference between the impact from the OIC pathway and the RMA pathway are expected to be nil or negligible.
  - Medium impact: There is an expected difference between the impact from the OIC pathway and the RMA pathway, but this difference is expected to be not substantial.
  - High Impact: The difference between the impact from the OIC pathway and the RMA pathway are expected to be substantial (higher or lower).

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

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

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

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

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

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

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

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

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



| Affected groups | Comment   | Impact  | Evidence Certainty                 |
|-----------------|---|---|------------------------------------|
|                 | <p><i>High evidence certainty for no costs of objection, as the OIC removes the ability to object.</i></p> <p><i>Medium evidence certainty for longer-term impacts of removal of that ability.</i></p> <p>The flood works are a key element in the region's recovery and resilience to future severe weather events; they are identified in the recovery plan as critical for protecting communities and restoring the resilience of the environment and infrastructure.</p>  | <p><i>Non-monetised impacts:</i></p> <ul style="list-style-type: none"> <li>- Cost: <i>low, medium, high</i></li> <li>- Benefit: <i>low, medium, high</i></li> <li>- No impact</li> </ul> | <p><i>High, medium, or low</i></p> |
| Workers         | <p>The region has a severe shortage of skilled civil infrastructure workers. Bringing the flood works forward will mean less time to build the skilled workforce, therefore workers may need to be brought in from other regions.</p> <p><i>High evidence certainty, as skills shortages are a known problem in the region.</i></p> <p>On the other hand, starting the flood works early will provide an earlier opportunity to begin building a skilled workforce that can be used for other infrastructure needs relating to the recovery. This may be a particular focus for the region's Māori and Pasifika communities<sup>28</sup>. The OIC will enable investment in these development opportunities to start earlier and will be an incentive for people to remain in the area. It may catalyse further work-related investment in the region eg, tertiary education.</p> | <p><b>High (ongoing)</b></p><br><br><br><br><br><br><br><br><br><br><br><p><b>Medium</b></p>  | <p>Medium</p>                      |

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

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

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

## **Total costs and benefits**

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

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

## Section 3: Delivering an option

### How will the new arrangements be implemented?

#### Timing of implementation

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

#### Risks and mitigation

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

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

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

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

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

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

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

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

### Monitoring and evaluation

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

### Reviews of the OIC

44. The OIC requires that the OIC be reviewed one year after enactment. This review will be undertaken by MfE as part of MfE's regular reviews (which started in early 2024) of OICs that are made under the SWERLA, and for which the Minister for the Environment is the responsible Minister.
45. The regular reviews are required under Section 12 of the SWERLA, which obliges the relevant Minister to decide whether to continue to be satisfied in relation to the following matters (SWERLA section 8(1)(a)):
  - The order is necessary or desirable for one or more purposes of SWERLA
  - the extent of the order is not broader (including geographically broader in application) than is reasonably necessary to address the matters that gave rise to the order.
  - the order does not breach section 1135 of the Act
  - the order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990.
46. The main steps of a review by the responsible agency are:
  - Approximately two months before a review begins, MfE informs stakeholders and Treaty partners about the information it is seeking, the relevant dates for the period to which the information refers, and opportunities for engagement.
  - MfE engages with internal and external stakeholders, and Treaty partners, to receive feedback on the use of the OICs and the impacts they are having.
  - MfE analyses the feedback and data received from stakeholders and Treaty partners. The draft options and recommendations for the Minister are

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

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

<sup>35</sup> Section 11 restricts the OIC from granting or modifying a requirement to release someone from custody or to have their detention reviewed, or from granting or modifying an exemption or restriction imposed by (for example) the New Zealand Bill of Rights Act 1990.

reviewed by the Legal team and a Treaty impact analysis is completed before they are finalised.

- MfE advises the Minister on whether the OIC remains necessary or desirable, and whether changes are needed to ensure it remains fit for purpose. If the Minister agrees to changes, we will work with relevant parties on the amendments.
- Key information relating to reviews is published on the MfE website. MfE liaises with other government agencies, as appropriate, on the outcomes of reviews.

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



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

| Pathway  | Why it is not appropriate for the flood works   |
|--|---|
| The Government has retained the fast-track pathway for obtaining consents under the RMA from the now repealed Natural and built Environment Act 2023 (NBEA). This is an interim measure until a new, standalone fast-track consenting legislation comes into effect. | Would not ensure that four of the eight flood works locations are consented in time for construction to commence in late 2024.  |
| Direct referral to the Environment Court   | Would not ensure that four of the eight flood works locations are consented in time for construction to commence in late 2024. Also not viable as multiple interests in the flood works make them unwieldy and difficult for the Environment Court to progress. |
| Proposals of National Significance   | Would not ensure that four of the eight flood works locations are consented in time for construction to commence in late 2024. The appeal pathway is also a risk to the timing and completion of the flood works.   |
| RMA Notices of requirement for new designations  | Not viable as an alternative consenting pathway, but notices of requirement could be sought later to ensure the completed works are protected from neighbouring land use changes..  |
| RMA Plan Change using standard Schedule 1 process to amend regional and district plans   | Requires a two-step process, with potential appeals, therefore would not ensure that four of the eight flood works locations are consented in time for construction to commence in late 2024.   |
| RMA Plan Change using the Streamlined Planning Process to amend regional and district plans  | Requires a two-step process therefore would not ensure that four of the eight flood works locations are consented in time for construction to commence in late 2024.  |

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

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

