

APPENDIX A Summary of Recovery Legislation and Consents Sought

Severe Weather Emergency Recovery Legislation Act 2023 (SWERLA)

The Severe Weather Emergency Legislation Act 2023 (**SWERLA**) amends several other statutes for the purposes of removing some of the “red tape” which could otherwise frustrate the very early stages of a recovery. These statutes include the Civil Defence Emergency Management Act 2002, the Local Government Act 2002, and the RMA.

With respect to the RMA amendments, the Emergency Act applies to the following areas and severe weather events (emphasis added):

area means any of the following regions or districts:

- (a) *the regions of Northland, Auckland, Waikato, Bay of Plenty, Gisborne, and Hawke’s Bay:*
- (b) *the districts of Taranaki, Masterton, Carterton, and South Wairarapa*

severe weather event means any of the following weather events:

- (a) *Cyclone Hale, which crossed the North Island during the period commencing on 8 January 2023 and ending on 12 January 2023:*
- (b) *heavy rainfall commencing on 26 January 2023 and ending on 3 February 2023 in the Northland, Auckland, Waikato, and Bay of Plenty regions:*
- (c) *Cyclone Gabrielle, which crossed the North Island during the period commencing on 12 February 2023 and ending on 16 February 2023.*

Section 330 of the RMA provides for emergency works to be undertaken, without firstly obtaining resource consent, in circumstances where there is either an adverse effect on the environment which requires immediate preventative or remedial actions, or any sudden event causing or likely to cause loss of life, injury, or serious damage to property.

Order in Council for recovery works

SWERLA provides for Orders in Council to be established to exempt, modify or extend legislation in connection to the response to severe weather events. The Order in Council relevant to this application - OIC-KR – came into force on 6 October 2023. Part 1 modifies sections of the RMA and several other instruments to streamline various consenting processes for recovery work on affected rail routes. Of particular interest to this application is the changes to the RMA in relation to applications for recovery work⁸ undertaken by or on behalf of KiwiRail. The OIC-KR establishes a streamlined consenting process for applications as summarised below:

- Recovery works are a controlled activity.
- Resource consent must be granted by a consent authority on the conditions set out in Schedules 2 and 3 of the Order in Council (except as modified via the process set out in the OIC-KR) with restrictions of the additional matters to which conditions can be recommended.
- Section 88 of the RMA is modified and Section 88(3) to (5) do not apply.
- Applications must be determined on a non-notified basis, however there are specified parties who must be consulted, and comments received as part of the consultation process under Clause 9 must be considered by the consent authority.
- When considering an application, the consent authority need not have regard to the matters in Section 104(1)(b) or 105 of the RMA.
- If a resource consent is a discharge permit, the consent authority is deemed to be satisfied of the matters in Section 107(2) of the RMA.
- The amended process applies to an application for a resource consent for recovery work undertaken under the emergency works provisions of the RMA.

⁸ As defined in clause 4 and clause 5 of Severe Weather Emergency Recovery (KiwiRail Holdings Limited) Order 2023.

The following timeframes apply:

- Within **5 working days** after an application is lodged, the consent authority must notify the listed persons that an application has been lodged, where they can find a copy of the application and invite written comments which must be received **10 working days** from the date of the invitation;
- Within **5 working days** of written comments being due, the consent authority must notify KiwiRail of any recommended amendments to Schedule 2 and 3 conditions and any additional recommended conditions (with reasons).
- Within **5 working days** of the notification above, KiwiRail must notify the consent authority of their decision on the recommendations.
- Notice of the consent authority's decision might be given within **30 working days** after the date on which the application was lodged.
- Time limits cannot be extended or deferred in any way.

KiwiRail makes this application in accordance with Clauses 7 and 14 of the OIC-KR. In accordance with Clause 8(2), the application must not be publicly notified or given limited notification.

The works undertaken meet the definition of 'recovery work' and are therefore subject to the amended process set out in OIC-KR because:

- The works are required in response to Cyclone Gabrielle (which meets the definition of a severe weather event).
- The site is within the area identified as an 'affected rail route' in Part 2, Schedule 1 of the OIC-KR.
- It is necessary and desirable to undertake the works in order to remediate the rail infrastructure, to enable this section of the PNGL to function effectively in future flood events.
- The works require a resource consent.

Emergency Works (s330AA RMA)

Section 330 of the RMA provides for KiwiRail, as a network utility operator approved as a Requiring Authority, to undertake preventative or remedial action where any natural or physical resource or area under its jurisdiction is, in the opinion of the authority, likely to be affected by:

- An adverse effect on the environment requiring immediate preventative measures; or
- An adverse effect on the environment requiring immediate remedial measures; or
- Any sudden event causing or likely to cause loss of life, injury or serious damage to property.

On February 13 -14 2023, extensive flood damage occurred to the Bridge 217 PNGL during Cyclone Gabrielle. This included significant damage to piles on several piers and bridge spans likely to have been caused in part, by debris and scour from flood flows combined with upstream structural failure.

Due to this section of the PNGL forming a key link between Napier and Hastings, the need to restore access to this section immediately following Cyclone Gabrielle at the time was imperative. A temporary infill bridge to replace the piers/spans destroyed in the cyclone was constructed between July and September 2023 to reinstate access. This required the installation of temporary laydown areas within the bed of the river to allow plant, equipment and machinery to construct the temporary infill bridge. The works were considered to meet the criteria under s330 in relation to enacting the emergency work provisions. This was undertaken at the time using the modified emergency work provisions to the RMA under the OIC-KR (s330AA).

The establishment, including the piers and piles, and ongoing operation of the temporary infill bridge is considered to occupy a similar footprint within the bed of the river and is of the same nature, scale, character and location as the bridge that existed pre-cyclone. On this basis there is not considered to be any continuing adverse effects associated with the temporary infill bridge.

The temporary laydown areas installed in the bed of the river to support the construction of the temporary infill bridge is considered to have an ongoing adverse effect associated with the continued occupation of the bed of the river and alteration to the river hydraulics. As such retrospective consent is being sought for the temporary laydown areas as outlined in Section 4.3 of this application.

It is understood that notification of the emergency works being completed was provided to the HBRC Council within the 100 working day period specified under s330AA(2). A retrospective consent would need

to be sought within 160 working days following notification to HRBC in accordance with s330(3). As part of this application, we request that a s37 extension be applied to extend the timeframe required to enable this application to be submitted.

Resource consents sought under the OIC-KR

The works to be undertaken as 'recovery works' require resource consent from the HBRC for the following activities:

- Installation of a structure (rock rip-rap armouring) within the bed of river in the coastal margin and associated disturbance and excavation of bed material (Discretionary – Rule 46 of the HBRCEP).
- Temporary dewatering, take and discharges into the Waitangi Estuary (Discretionary – Rules 9 and 35 of the HBRCEP).
- Large scale riverbed gravel extraction (Restricted Discretionary – Rule 61 of the HBRCEP).
- Drainage of natural inland wetlands as part of the earthworks (Non-Complying Activity under Regulation 52).
- Vegetation clearance and soil disturbance (Restricted Discretionary – Rule 7 of the HBRCEP) to install the structure.
- Drainage of natural inland wetlands (Non-Complying – Regulation 52 NES-F 2020).

The works undertaken as emergency works, require resource consent from HBRC under Section 330AA of the RMA because:

- Installation of a structure (crane pads) within the bed of river in the coastal margins and associated disturbance and excavation of bed material (Discretionary – Rule 46 of the HBRCP).
- Vegetation clearance and soil disturbance (Restricted Discretionary – Rule 7 of the HBRCP).
- There is considered to be potential for the adverse effects of the activity to be ongoing.

As these works are subject to the OIC-KR in accordance with Clause 6(2) the 'recovery work' must be assessed as a controlled activity.