



## Hurunui/Kaikōura Earthquakes Recovery (Coastal Route and Other Matters) Order 2016

Patsy Reddy, Governor-General

### Order in Council

At Wellington this 20th day of December 2016

Present:

Her Excellency the Governor-General in Council

This order is made under section 7 of the Hurunui/Kaikōura Earthquakes Recovery Act 2016—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the joint recommendation of the relevant Ministers made in accordance with sections 8 and 9 of that Act.

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**Order**

- 1 Title**  
This order is the Hurunui/Kaikōura Earthquakes Recovery (Coastal Route and Other Matters) Order 2016.
- 2 Commencement**  
This order comes into force on the day after the date on which the order is made.

## Part 1

### Preliminary provisions

#### 3 Interpretation

(1) In this order, unless the context otherwise requires,—

**agency** means—

- (a) the New Zealand Transport Agency;
- (b) KiwiRail Holdings Limited

**CMA** means the coastal marine area (as defined in section 2(1) of the RMA) that is adjacent to the coastal route

**coastal route**—

- (a) means—
  - (i) State Highway 1, between Clarence River and the Oaro rail over-bridge; and
  - (ii) the railway line known as the Main North Line, between 125 km MNL (south of Phoebe Station) and 330 km MNL (north of Tunnel 24); and
- (b) includes all land, infrastructure, and other property adjacent to or associated with the coastal route described in paragraph (a)

**heavy motor vehicle** has the meaning given in section 2(1) of the Land Transport Act 1998

**local authority** means any of the following:

- (a) the Hurunui District Council;
- (b) the Kaikoura District Council;
- (c) the Marlborough District Council;
- (d) the Canterbury Regional Council

**modify**, in relation to a provision of an enactment, means to affect the provision in 1 or more of the ways described in section 7 of the Hurunui/Kaikōura Earthquakes Recovery Act 2016 (including in the manner described in subsection (5) of that section)

**plan**—

- (a) has the meaning given in section 2(1) of the RMA; and
- (b) includes a proposed plan

**policy, management strategy, or management plan** means a policy, management strategy, or management plan made under or in accordance with any of the following:

- (a) the Conservation Act 1987;
- (b) the Marine Mammals Protection Act 1978;

- (c) the Marine Reserves Act 1971;
- (d) the Reserves Act 1977;
- (e) the Wildlife Act 1953

**restoration work—**

- (a) means any activity that, because of or in connection with the Hurunui/Kaikōura earthquakes, it is necessary or desirable to undertake to, without undue delay, restore the coastal route and enable it to be used fully, effectively, and safely; and
- (b) includes any activity necessary or desirable to—
  - (i) repair and rebuild the coastal route; and
  - (ii) enhance the safety and improve the resilience of the coastal route

**RMA** means the Resource Management Act 1991

**Te Whata Kai o Rakihouia i Te Tai o Marokura—Kaikōura Marine Area** has the meaning given in section 4 of the Kaikōura (Te Tai o Marokura) Marine Management Act 2014

**territorial authority** means any of the following:

- (a) the Hurunui District Council;
- (b) the Kaikoura District Council;
- (c) the Marlborough District Council

**Waitohi Domain** means 3.4557 hectares, more or less, being Section 1277 Town of Picton, Marlborough Land District

**working day**, includes Saturday and Sunday, but excludes—

- (a) Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, and Labour Day; and
  - (b) a day in the period commencing on 24 December in any year and ending with the close of 2 January in the following year; and
  - (c) if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday; and
  - (d) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday.
- (2) A modification to an enactment made by this order does not affect the text of the enactment, but requires the enactment to be read as if it had been amended in the manner indicated by this order.
  - (3) In Part 2, a term defined in the RMA that is used, but not defined, in this order has the same meaning as in the RMA.
  - (4) In Part 6, a term defined in the Public Works Act 1981 that is used, but not defined, in this order has the same meaning as in that Act.

#### 4 Revocation

This order is revoked on 31 March 2018.

### Part 2 Modifications to Resource Management Act 1991

#### 5 This Part modifies provisions of RMA

- (1) This Part modifies provisions of the RMA.
- (2) In this Part, **restoration work** means restoration work (within the meaning of clause 3(1)) that—
  - (a) would require a resource consent under section 9, 12, 13, 14, or 15 of the RMA; and
  - (b) has any status other than that of a permitted activity under—
    - (i) the district or regional plan of a local authority; or
    - (ii) a national environmental standard.

#### 6 Classification of restoration work

- (1) This clause modifies sections 87A(2) to (6) and 104A(b) of the RMA.
- (2) Restoration work done by or on behalf of an agency is a controlled activity for the purposes of section 87A(2) of the RMA.
- (3) The consent authority must grant a resource consent for the restoration work.
- (4) For the purposes of section 87A(2)(b) and 104A(b), the consent authority's power to impose conditions on the resource consent is restricted to the following matters:
  - (a) the management of the effects of the restoration work on—
    - (i) areas of significant indigenous vegetation and significant habitats of indigenous fauna:
    - (ii) fresh water quality:
    - (iii) heritage, cultural, and archaeological values:
    - (iv) landscape, natural character, and visual amenity:
    - (v) coastal processes:
    - (vi) coastal water quality:
    - (vii) marine mammals and seabirds:
  - (b) the management of construction work, stormwater, marine biosecurity, hazardous substances, spills, artificial lighting, dust, noise, and vibration.
- (5) Wherever practicable, significant adverse effects of the restoration work on adjoining landowners must be avoided, remedied or mitigated.
- (6) Section 87A(2)(c) does not apply in relation to the restoration work.

- (7) Subclause (4) is subject to clause 11.

#### **7 Making application for resource consent for restoration work**

- (1) This clause modifies section 88 of the RMA.
- (2) Instead of complying with section 88(2), an application for resource consent for restoration work must include—
- (a) a broad description of the work:
  - (b) a broad description of the site at which the work is to occur, including a map of the corresponding area:
  - (c) a desktop assessment of the potential effects of the work:
  - (d) any conditions that the agency proposes for the consent:
  - (e) a description of any consultation undertaken in relation to the work.
- (3) Section 88(3) to (5) does not apply to an application for resource consent for the restoration work.

#### **8 Application must be determined on non-notified basis**

- (1) This clause and clauses 9 and 10 modify sections 95 to 99A, 104, 105, 107(2), and 115 of the RMA.
- (2) An application for resource consent for restoration work—
- (a) must not be publicly notified or given limited notification, but must be consulted on with the specified persons in accordance with clause 9; and
  - (b) otherwise must be determined in accordance with Part 6 of the RMA, except that—
    - (i) the consent authority need not have regard to the matters in section 104(1)(b) or 105 when considering the application; and
    - (ii) if the resource consent is a discharge permit, the consent authority is deemed to be satisfied of the matters in section 107(2); and
    - (iii) the consent authority must consider comments made under clause 9 and make a summary of the comments publicly available in accordance with that clause; and
    - (iv) for the purposes of section 115, notice of the consent authority's decision must be given within 21 working days after the date on which the application was lodged with the consent authority.
- (3) The time limit specified in subclause (2)(b)(iv) cannot be extended or deferred in any way (including under section 37, 88B, 88C, or 88E of the RMA).

#### **9 Consultation with specified persons**

- (1) As soon as practicable after an application for resource consent for restoration work is lodged with the consent authority, the consent authority—

- (a) must advise the persons specified in subclause (2) that an application has been lodged; and
  - (b) must invite those persons to make written comments.
- (2) The persons are—
- (a) any of the following in whose rohe the work is to be undertaken:
    - (i) Ngāti Apa ki te Rā Tō;
    - (ii) Ngāti Kōata;
    - (iii) Ngāti Kuia;
    - (iv) Ngāti Rārua;
    - (v) Ngāti Tama ki Te Tau Ihu;
    - (vi) Ngāti Toa Rangatira;
    - (vii) Rangitāne o Wairau;
    - (viii) Te Atiawa o Te Waka-a-Māui;
    - (ix) Te Rūnanga o Ngāi Tahu and any Papatipu Rūnanga identified by Te Rūnanga o Ngāi Tahu; and
  - (b) each local authority in whose district or region the work is to be undertaken; and
  - (c) if the work is to be undertaken within Te Whata Kai o Rakihouia i Te Tai o Marokura—Kaikōura Marine Area, the Kaikōura Marine Guardians; and
  - (d) Maritime New Zealand; and
  - (e) the Minister for Arts, Culture and Heritage; and
  - (f) the Minister of Conservation; and
  - (g) the Minister for the Environment; and
  - (h) the Minister of Defence; and
  - (i) the Minister for Primary Industries; and
  - (j) the Canterbury Regional and Marlborough District Harbourmasters; and
  - (k) any network utility operator that undertakes a network utility operation in, on, or under the land where the work is to be undertaken; and
  - (l) the owners and occupiers of land directly adjacent to where the work is to be undertaken; and
  - (m) any other person as the consent authority considers appropriate, including the public generally.
- (3) For the purposes of subclause (1), the consent authority must—
- (a) invite each person referred to in subclause (2) to make written comments on the application; and



- (b) give those persons 15 working days from the making of an invitation within which to make their comments to the consent authority; and
  - (c) specify in the invitation the date by which written comments are to be received by the consent authority.
- (4) An invitation under this clause is to be treated as a document to be served for the purposes of the RMA, and section 352 of that Act applies accordingly.
- (5) A person invited to make written comments under this clause on an application—
  - (a) may not appeal under the RMA against the consent authority's decision on the application; and
  - (b) may not object under Part 14 of the RMA against the consent authority's decision on the application.
- (6) To avoid doubt, a person who makes written comments to a consent authority under this clause is not to be treated under the RMA as a person making a submission on the application.

#### **10 Summary of responses**

- (1) Before a consent authority makes a decision on an application for a resource consent for restoration work, the consent authority must—
  - (a) consider the comments made on the application under clause 9; and
  - (b) prepare a summary of the comments.
- (2) The summary, together with the consent authority's response to the issues raised in the comments, must be made publicly available on an Internet site at the same time as, or before, the decision on the application is notified under the RMA.

#### **11 Application for resource consents for restoration work before April 2017 or before end of transition period**

- (1) This clause modifies sections 95 to 99A, 104, 104A, 105, 107(2), 108, and 115 of the RMA in relation to an application for resource consent for restoration work under clause 7 if that application is made—
  - (a) on or before 31 March 2017; or
  - (b) if the work is to be undertaken within an area to which a state of emergency or a transition period (within the meaning of the Civil Defence Emergency Management Act 2002) applies, before the end of the transition period.
- (2) An agency may proceed with the application—
  - (a) under clauses 8 to 10; or
  - (b) under this clause, in which case the application must be determined in accordance with subclauses (3) to (10).

- (3) The application for resource consent must not be publicly notified or given limited notification.
- (4) A resource consent for the restoration work must be granted on the conditions set out in Schedule 1 that relate to the work as modified by—
  - (a) any amendments recommended by the consent authority under subclause (5) that are accepted by the agency;
  - (b) if the agency rejects any amendments recommended by the consent authority, the alternative amendments identified by the agency under subclause (8)(b).
- (5) The consent authority may, within 3 working days after the date of the application, notify the agency of any amendments that the consent authority recommends to the conditions that relate to the work under Schedule 1.
- (6) In the notification, the consent authority—
  - (a) must set out the recommended amendments to the conditions; and
  - (b) may include a statement setting out the consent authority's reasons for the recommendation.
- (7) The agency must, within 3 working days after the date of the notification, notify the consent authority of the agency's decision on the recommendation.
- (8) In the notification, the agency must—
  - (a) identify the recommended amendments that the agency accepts; and
  - (b) identify any recommended amendments that the agency rejects, together with the alternative amendments that will apply (which must not be less onerous than the conditions in Schedule 1);
  - (c) include a statement of the agency's reasons for rejecting any recommended amendment.
- (9) For the purposes of section 115 of the RMA, notification of the consent authority's decision must be given—
  - (a) within 7 working days after the date on which the application was lodged with the consent authority; or
  - (b) if the consent authority recommends any amendments under this clause, within 3 working days after the date on which the agency notifies the consent authority of the agency's decision on the recommendation.
- (10) The time limits specified in this clause cannot be extended or deferred in any way (including under section 37, 88B, 88C, or 88E of the RMA).

## **12 Restoration work that is done as emergency works**

- (1) This clause modifies sections 330 and 330B of the RMA in relation to restoration work undertaken by an agency under either of those sections.
- (2) The agency must,—

- (a) before the work is undertaken, consider the environmental effects of the restoration work (including any effects on fish, marine mammals, and seabirds) and how the effects may be avoided, remedied, or mitigated; and
- (b) while the work is being undertaken,—
  - (i) monitor the environmental effects of the restoration work (including any effects on fish, marine mammals, and seabirds); and
  - (ii) avoid, remedy, or mitigate those effects as far as is practicable.
- (3) However, subclause (2)(a) and (b)(i) does not apply if the agency undertakes work within the period of 10 working days after the commencement of this order.
- (4) Instead, the agency must, before the end of that period,—
  - (a) consider the matters referred to in subclause (2)(a); and
  - (b) ensure the agency is prepared to monitor the environmental effects of the restoration work as provided for in subclause (2)(b)(i) from the expiry of that period.
- (5) An application for resource consent for restoration work undertaken under section 330 or 330B of the RMA must be made in accordance with clause 7 and determined in accordance with this Part.

### **13 Reclaimed land**

- (1) This clause modifies sections 89, 116(2), and 245(4)(a) of the RMA in relation to land that is reclaimed as restoration work.
- (2) If an agency applies for resource consent to reclaim land as restoration work, the relevant regional council and the territorial authority in the district adjacent to the land to be reclaimed have, in relation to the land to be reclaimed and any activity on the land to be reclaimed, the powers, functions, and duties that each would have under the RMA if the whole of the land to be reclaimed were already land that is part of the territorial authority's district.
- (3) Sections 87B(1), 89(3), and 116(2) of the RMA do not apply to a resource consent for restoration work on the reclaimed land.
- (4) For the purpose of section 245(4)(a) of the RMA, the reclamation of the reclaimed land in accordance with this Part is deemed to comply with any relevant provisions of any regional plan.

### **14 Temporary depots, storage facilities, and parking deemed to be permitted activities**

- (1) This clause modifies section 87A(1) to (6) of the RMA.
- (2) The operation of a temporary depot or storage facility or a parking area situated on a specified location is a permitted activity for the purposes of section 87A(1).

- (3) Subclause (2) applies only if—
- (a) the specified location is identified by public notice given by a territorial authority and the depot, facility, or parking area complies with any standards imposed by that notice; and
  - (b) every person providing the depot, facility, or parking area, or using the depot, facility, or parking area, at all times complies with any further requirements, imposed under a public notice given by the territorial authority after the operation of the depot, facility, or parking area has commenced,—
    - (i) for the purpose of controlling the emission of noise from the specified location; or
    - (ii) for the purpose of avoiding, remedying, or mitigating any adverse effects of the operation of the depot, facility, or parking area on the environment.
- (4) If the restoration work or other activity to which a temporary depot or storage facility is related ceases before the revocation of this order, the operation of the depot or facility is no longer a permitted activity and must also cease.
- (5) If the disruption to the land transport system in relation to which a parking area is necessary or desirable ceases, the operation of the parking area is no longer a permitted activity and must also cease.
- (6) In this clause,—

**parking area** means a parking area for heavy motor vehicles that is necessary or desirable as a consequence of disruption to the land transport system caused (directly or indirectly) by the earthquakes

**specified location** means an area of land, in any of the districts of the territorial authorities, on which 1 or more temporary depots, storage facilities, or parking areas are sited

**temporary depot or storage facility**—

- (a) means a depot or storage facility for transport purposes, or for use by tradespersons, service providers, or contractors, if the depot or facility is reasonably incidental to—
  - (i) any restoration work; or
  - (ii) any activity that is necessary or desirable in order to, without undue delay, restore any other road or rail line under the control of an agency; and
- (b) includes land and structures used for—
  - (i) such activities as the delivery, transit, distribution, or storage of vehicles, machinery, equipment, materials, food, emergency supplies, debris and waste materials, or other relevant things; or
  - (ii) the provision of services.

**15 Excavation and filling of Waitohi Domain deemed to be controlled activity**

- (1) This clause modifies sections 87A(1) to (6), 88(2), 104, 104A, and 115 of the RMA.
- (2) The excavation and filling of the Waitohi Domain is a controlled activity for the purposes of section 87A(2).
- (3) Subclause (2) applies only if the excavation and filling is undertaken—
  - (a) for the purpose of establishing a parking area in the domain; and
  - (b) by or on behalf of the Marlborough District Council or the New Zealand Transport Agency.
- (4) An application for resource consent for the excavation and filling must be made in accordance with clause 7.
- (5) The application must not be publicly notified or given limited notification.
- (6) The resource consent must be granted on the conditions set out in clause 9 of Schedule 1.
- (7) For the purposes of section 115 of the RMA, notice of the consent authority's decision must be given within 5 working days after the date on which the application was lodged.
- (8) The time limit specified in subclause (7) cannot be extended or deferred in any way (including under section 37, 88B, 88C, or 88E of the RMA).

**16 Outline plan not required for restoration work**

Section 176A of the RMA does not apply in relation to any restoration work carried out by or on behalf of an agency in accordance with any of its designations.

**17 Alteration to designations**

- (1) This clause modifies section 181(2) and (3) of the RMA.
- (2) This clause applies to a notice of a requirement to alter the boundaries of a designation (including by adding to a designation reclaimed land to which clause 13 applies) that is given to a territorial authority by an agency under section 181 if—
  - (a) the alteration is reasonably necessary for restoration work; and
  - (b) the notice is expressed as being given under this clause as well as under section 181.
- (3) The agency must, before giving the notice to the territorial authority, invite comments from—
  - (a) any landowner directly affected by the alteration to the designation; and
  - (b) each organisation specified in clause 9(2)(a) (to the extent that the designation affects the organisation's rohe) and the Kaikoura Marine Guardi-

ans (if the designation affects Te Whata Kai o Rakihouia i Te Tai o Marokura—Kaikōura Marine Area).

- (4) If any landowner or organisation does not provide comments within 7 working days after the invitation to comment, the agency may consider that the landowner or organisation has not provided comments.
- (5) Together with the notice, the agency must provide a summary of any comments received under subclause (4) and a statement setting out how the comments have been addressed, and for comments that have not been addressed, the reasons why the comments have not been addressed.
- (6) The territorial authority must make any necessary changes to the district plan to—
  - (a) alter the boundaries of the designation in accordance with the agency's notice; and
  - (b) alter the designation to impose the conditions set out in Schedule 2.

## **18 Enforcement**

- (1) This clause modifies sections 311(1) and 316(1) to (3) of the RMA.
- (2) For the purposes of activities undertaken in reliance on this Part, only a consent authority or a Minister of the Crown may take enforcement proceedings (including declaratory proceedings) under Part 12 of the RMA, including in any case where it is alleged that a consent holder has breached section 16 or 17 of the RMA.

## **Part 3**

### **Modifications to enactments relating to conservation**

#### *Conservation Act 1987 and Reserves Act 1977*

## **19 Concession for restoration work in conservation area or reserve vested in Crown**

- (1) This clause applies if an agency applies,—
  - (a) under section 17R(1) of the Conservation Act 1987, for a concession for the purpose of carrying out restoration work; or
  - (b) under section 59A of the Reserves Act 1977, for a concession for the purpose of carrying out restoration work in relation to a reserve vested in the Crown.
- (2) Section 17T of the Conservation Act 1987 and section 59A(1) of the Reserves Act 1977 are modified as set out in this clause.
- (3) Sections 17N(2), 17R(2), 17S(3) to (5) and (6)(b) and (c), 17T(2) and (3), 17U, 17W, 17X, 17Y, 26ZI, and 26ZJ of the Conservation Act 1987 and section

59A(2) to (5) of the Reserves Act 1977 do not apply in relation to the concession or the restoration work.

- (4) A policy, management strategy, or management plan that would otherwise apply to the conservation area or reserve does not apply in relation to the concession or the restoration work.
- (5) The Minister of Conservation must grant the concession within 5 working days after the date on which the agency makes its application.
- (6) The only conditions that the Minister may impose on the concession are the conditions set out in Schedule 3.
- (7) If, 5 working days after the date on which the agency makes its application, the Minister has not granted the concession, the agency is deemed to have the concession with the conditions set out in Schedule 3.
- (8) A concession granted under this clause must be treated as if it were also a concession granted under section 59A of the Reserves Act 1977.

#### *Freshwater Fisheries Regulations 1983*

#### **20 Exemption from restriction on taking fish from or near fish traps**

Regulation 21 of the Freshwater Fisheries Regulations 1983 does not apply to an agency carrying out restoration work.

#### **21 Approval or dispensation in relation to freshwater fisheries**

- (1) This clause applies if an agency applies, under regulation 42, 43, or 44 of the Freshwater Fisheries Regulations 1983 (the **regulations**), for an approval or dispensation for the purpose of carrying out restoration work.
- (2) Regulations 42, 43, and 44 of the regulations are modified as set out in this clause.
- (3) Regulations 42(2), 43(3), 44(2) and (3), 45, and 48 of the regulations do not apply to the approval or dispensation or the restoration work.
- (4) The Director-General of Conservation must grant the approval within 5 working days after the date on which the agency makes its application.
- (5) The only conditions that the Director-General may impose on the approval are the conditions set out in Schedule 4.
- (6) If, 5 working days after the date on which the agency makes its application, the Director-General has not granted the approval or dispensation, the agency is deemed to have the approval with the conditions set out in Schedule 4 or the dispensation.

*Marine Mammals Protection Act 1978***22 Permit to hold or take marine mammals**

- (1) This clause applies if an agency applies, under section 5(1) of the Marine Mammals Protection Act 1978 (the **Act**), for a permit to hold or take a marine mammal in the course of carrying out restoration work.
- (2) Sections 5(1) and (2), 6, and 7 of the Act are modified as set out in this clause.
- (3) Sections 3A, 5(4), (5), and (7), and 7(2) of the Act do not apply in relation to the permit or the restoration work.
- (4) A policy, management strategy, or management plan that would otherwise apply to the holding or taking of marine mammals does not apply in relation to the permit or the activity covered by the permit.
- (5) The Minister of Conservation must grant the permit within 5 working days after the date on which the agency makes its application.
- (6) The only conditions that the Minister may impose on the permit are the conditions set out in Schedule 3.
- (7) If, 5 working days after the date on which the agency makes its application, the Minister has not granted the permit, the agency is deemed to have the permit with the conditions set out in Schedule 3.

*Marine Reserves Act 1971***23 Consent to undertake restoration work in Hikurangi Marine Reserve**

- (1) This clause applies if an agency requests, from the Minister of Conservation and the Minister in charge of the agency in control of any restoration work, consent under section 4(3) of the Marine Reserves Act 1971 (the **Act**) for the purpose of carrying out restoration work.
- (2) Section 4(3) of the Act is modified as set out in this clause.
- (3) Section 9 of the Act does not apply in relation to the consent or the restoration work.
- (4) A policy, management strategy, or management plan that would otherwise apply to the Hikurangi Marine Reserve does not apply in relation to the consent or the restoration work.
- (5) The agency must be treated as if it were a department for the purpose of section 4(3) of the Act.
- (6) The Ministers must provide the consent to the agency within 5 working days after the date on which the agency makes its request.
- (7) The only conditions that the Ministers may impose on the consent are the conditions set out in Schedule 3.



- (8) If, 5 working days after the date on which the agency makes its request, the Ministers have not provided the consent, the agency is deemed to have the consent with the conditions set out in Schedule 3.
- (9) A consent given under this clause is lawful authority for the purpose of section 18I of the Act.

*Ōhau New Zealand Fur Seal Sanctuary (Restrictions) Notice 2014*

**24 Authority to enter Ōhau New Zealand Fur Seal Sanctuary**

- (1) This clause applies if an agency requests, from the Director-General of Conservation, authority under clause 3(h) of the Ōhau New Zealand Fur Seal Sanctuary (Restrictions) Notice 2014 to enter the Ōhau New Zealand Fur Seal Sanctuary for the purpose of carrying out restoration work.
- (2) Section 17 of the Kaikōura (Te Tai o Marokura) Marine Management Act 2014 (the Act) is modified as set out in this clause.
- (3) Section 20 of the Act does not apply in relation to the authority or the restoration work.
- (4) The Director-General of Conservation must provide the authorisation to the agency within 5 working days after the date on which the agency makes its request.
- (5) The only conditions that the Director-General may impose on the authorisation are the conditions set out in Schedule 3.
- (6) If, 5 working days after the date on which the agency makes its request, the Director-General has not provided the authorisation, the agency is deemed to have the authorisation with the conditions set out in Schedule 3.

*Wildlife Act 1953*

**25 Concession for restoration work in wildlife sanctuary, wildlife refuge, or wildlife management reserve**

- (1) This clause applies if an agency applies for a concession in respect of any wildlife sanctuary, wildlife refuge, or wildlife management reserve under section 14AA of the Wildlife Act 1953 (the Act) for the purpose of carrying out restoration work.
- (2) Section 14AA(1) of the Act and sections 17T of the Conservation Act 1987 are modified as set out in this clause.
- (3) Sections 14AA(2) and (3) and 14B of the Act and sections 17N(2), 17R(2), 17S(3) to (5) and (6)(b) and (c), 17T(2) and (3), 17U, 17W, 17X, 17Y, 26ZI, and 26ZJ of the Conservation Act 1987 do not apply in relation to the concession or the restoration work.
- (4) A prohibition or condition imposed by or under section 9, 14, or 14A of the Act does not apply in relation to the concession or the restoration work.

- (5) A policy, management strategy, or management plan that would otherwise apply to the wildlife area does not apply in relation to the concession or the restoration work.
- (6) The Minister of Conservation must grant the concession within 5 working days after the date on which the agency makes its application.
- (7) The only conditions that the Minister may impose on the concession are the conditions set out in Schedule 3.
- (8) If, 5 working days after the date on which the agency makes its application, the Minister has not granted the concession, the agency is deemed to have the concession with the conditions set out in Schedule 3.

#### **26 Authority to take or kill wildlife or marine wildlife**

- (1) This clause applies if an agency requests authority under section 53 of the Wildlife Act 1953 (the **Act**) to take or kill any wildlife in the course of restoration work.
- (2) Section 53 of the Act is modified as set out in this clause.
- (3) Sections 10, 14B, and 53(5) of the Act do not apply to the authority or the activity covered by the authority.
- (4) A prohibition or condition imposed by or under section 9, 14, or 14A of the Act does not apply to the authority or the activity covered by the authority.
- (5) A policy, management strategy, or management plan that would otherwise apply to the taking or killing of wildlife does not apply in relation to the authority or the activity covered by the authority.
- (6) The Director-General of Conservation must issue the authority within 5 working days after the date on which the agency makes its request.
- (7) The only conditions that the Director-General may impose in the authority are the conditions set out in Schedule 3.
- (8) If, 5 working days after the date on which the agency makes its request, the Director-General has not issued the authority, the agency is deemed to have the authority with the conditions set out in Schedule 3.

### **Part 4**

#### **Modifications to Reserves Act 1977**

##### **27 This Part modifies Reserves Act 1977**

This Part modifies the Reserves Act 1977.

##### **28 Reserves to which this Part applies**

- (1) This Part applies to—

- (a) any land that is a reserve or a public reserve (as those terms are defined in section 2(1) of the Reserves Act 1977) that is owned, administered, managed, or controlled by a local authority;
  - (b) any land that is owned, administered, managed, controlled, or held by a local authority under any enactment (other than the Reserves Act 1977) as a reserve or park, or for community purposes;
  - (c) any part of any land described in paragraph (a) or (b).
- (2) This Part does not apply to any reserve that is administered, managed, controlled, or held by a local authority on behalf of the Crown.
- (3) In this Part, **reserve** means land to which this Part applies as described in this clause.

### **29 Agencies' powers in relation to reserves**

An agency may do 1 or more of the following:

- (a) undertake restoration work anywhere in a reserve;
- (b) operate a parking area for heavy motor vehicles anywhere in a reserve;
- (c) prohibit persons from entering or remaining on a reserve.

### **30 Actions of agency authorised despite management plan, Reserves Act 1977, or other enactment**

- (1) An agency may act under clause 29 in relation to a reserve—
- (a) despite anything to the contrary in the management plan for the reserve, the Reserves Act 1977, or any other enactment under which the reserve is held or that applies to the reserve; and
  - (b) without complying with any requirement in the management plan for the reserve, the Reserves Act 1977, or any other enactment under which the reserve is held or that applies to the reserve (for example, any provision relating to public notification or the hearing of objections).
- (2) However, when acting under subclause (1), the agency—
- (a) must take all reasonable steps in the circumstances to protect the integrity of the reserve; and
  - (b) where undertaking restoration work or if the reserve is adversely affected by the agency's actions, must reinstate the reserve as closely as practicable to its prior condition.
- (3) Subclause (2) does not apply to the extent that it is necessary for the agency to occupy any part of the reserve in order to undertake any restoration work that is necessary for permanent infrastructure associated with the coastal route.

## Part 5

### Modifications to Heritage New Zealand Pouhere Taonga Act 2014

#### 31 Emergency authority

- (1) An agency may apply for an emergency authority under subpart 3 of Part 3 of the Heritage New Zealand Pouhere Taonga Act 2014 (the **Act**) to undertake restoration work.
- (2) Heritage New Zealand Pouhere Taonga must—
  - (a) treat the application as if the circumstances described in section 61(1) of the Act applied (whether or not a state of emergency or transition period is in force when the application is made); and
  - (b) despite section 62(1)(b) of the Act, grant the emergency authority, with or without conditions.
- (3) Despite section 64(2)(b) of the Act, a notice of appeal must be lodged not later than 5 working days after notice of the grant is given under section 62(6) of the Act.
- (4) Subpart 3 of Part 3 of the Act, except sections 61(4) and 62(2), applies accordingly to applications made under this clause.

## Part 6

### Modifications to Public Works Act 1981

#### 32 This Part applies to acquisition of land for restoration work

This Part applies to land that, in the Minister for Land Information's opinion, it is reasonably necessary to compulsorily acquire in order for an agency to undertake restoration work.

#### 33 Section 18 of Public Works Act 1981 does not apply

Section 18 of the Public Works Act 1981 (which relates to prior negotiations required for acquisition of land for essential works) does not apply in relation to the acquisition of land under this Part.

#### 34 Modifications to sections 23 to 26 of Public Works Act 1981

Sections 23 to 26 of the Public Works Act 1981 are modified as set out in clauses 35 to 38 in relation to the acquisition of land to which this Part applies.

#### 35 Notice of intention to acquire land

- (1) The Minister for Land Information may acquire land compulsorily by publishing a notice of intention to acquire land in the name of the Crown in the *Gazette* and twice publicly notifying it, which notice must—

- (a) give a general description of the land to be acquired (including the name of and number in the road or some other readily identifiable description of the place where the land is situated); and
  - (b) describe the purpose for which the land is to be used.
- (2) The Minister must serve a notice of intention to acquire the land (in the form set out in Schedule 5) on the owner of, and persons with a registered interest in, the land, unless it is impracticable to do so.
- (3) The Minister must lodge a copy of the *Gazette* notice published under sub-clause (1) with the Registrar-General of Land, who must register it without fee against the computer register affected.
- (4) Any notice under this clause may be withdrawn by the Minister, and, if it is withdrawn, a notice to that effect must be lodged with the Registrar-General of Land, who must register it without fee against the computer register to the land.
- (5) To avoid doubt, there is no right of objection to a notice of intention to acquire land.
- (6) A notice of intention to acquire land under this clause ceases to have effect on the revocation of this order unless, before that revocation, a Proclamation taking the land has been published in the *Gazette*.

### **36 Proclamation**

- (1) If the Minister for Land Information considers that land should be acquired in the name of the Crown, the land intended to be acquired may be acquired in accordance with this clause.
- (2) If necessary, a cadastral survey dataset accurately showing the position and extent of the land to be acquired must be prepared and be lodged with the chief executive of the department of State that, with the authority of the Prime Minister, is responsible for the administration of the Cadastral Survey Act 2002 for the purposes of that Act.
- (3) So long as the *Gazette* notice has been registered in accordance with clause 35(3), the Minister may recommend that the Governor-General issue a Proclamation taking the land.
- (4) The Governor-General may, on the recommendation of the Minister, by Proclamation declare that the land described in the Proclamation is acquired in the name of the Crown.
- (5) Every Proclamation under this clause must be published in the *Gazette* and publicly notified within 1 month after the date of its making, together with a readily identifiable description of the land acquired, but a Proclamation is not invalidated by any error, defect, or delay in its publication under this clause.
- (6) Unless otherwise provided in the Proclamation, the land specified in a Proclamation under this clause becomes absolutely vested in fee simple in the Crown and freed and discharged from all mortgages, charges, claims, estates,

or interests of whatever kind on the 14th day after the date on which the Proclamation is published in the *Gazette*.

- (7) If land is compulsorily acquired under this clause, the Crown succeeds to all rights, entitlements, and benefits that the owner has or may have against—
- (a) the insurer of the land; or
  - (b) the insurer of any building or other property on the land.

### **37 Proclamation to be registered**

- (1) The Minister for Land Information must lodge every Proclamation with the Registrar-General of Land, who must register it without fee against the computer register for the land.
- (2) If the land is not subject to the Land Transfer Act 1952, the Registrar-General of Land must enter the Proclamation in the index book of the Deeds Register Office and, on such registration, the land becomes subject to the Land Transfer Act 1952.
- (3) An error in any Proclamation does not of itself prevent registration in respect of titles to land validly affected.
- (4) If land is not subject to the Land Transfer Act 1952 and dealings with it are not registrable under the Deeds Registration Act 1908, the Proclamation must be lodged with the Surveyor-General to be recorded in the cadastre.
- (5) To avoid doubt, the registration of a Proclamation does not result in the cancellation of the title affected.

### **38 Land acquired for public work**

Land that is acquired under this Part must otherwise be treated, for the purposes of the Public Works Act 1981 (including, in relation to compensation for and disposal of the land), as if it had been acquired under Part 2 of that Act for a Government work.

## **Part 7**

### **Other necessary modifications**

#### **39 Other necessary modifications**

This order also modifies any other provision of an enactment modified in Parts 2 to 6 to the extent necessary to give effect to the clauses in those Parts.

## Schedule 1

### Resource consent conditions

cls 11, 15(6)

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## 1 Authorised activities

- (1) The conditions in this schedule apply to a resource consent that authorises any activities in subclause (2) that it is necessary or desirable to undertake, because of or in connection with the Hurunui/Kaikōura earthquakes, to—
  - (a) repair and rebuild the coastal route; and
  - (b) enhance the safety and improve the resilience of the coastal route.
- (2) The activities are all temporary and permanent activities for land transport requiring consent under section 9, 12, 13, 14, or 15 of the RMA.
- (3) The final location of any structure or reclamation must be provided to the relevant regional council and territorial authority after the activities are completed.

## 2 Definitions

In this schedule,—

**20-year ARI rain event** means the rainfall depth that is expected to occur, on average, once every 20 years

**100-year ARI rain event** means the rainfall depth that is expected to occur, on average, once every 100 years

**construction works** means activities (other than minor works) undertaken to fully restore a safe and resilient coastal route for road and rail from 330 km MNL (north of Tunnel 24, which is north of Tuamarina; NZTM: 1680440; 5414638) to 125 km MNL (south of Phoebe Station, which is inland from Cheviot; NZTM: 1618705; 5265446)

**Council** means,—

- (a) in the case of a resource consent granted by a territorial authority, the territorial authority in whose district the works are to be undertaken:
- (b) in the case of a resource consent granted by a regional council, the regional council in whose region the works are to be undertaken

**minor works** means preliminary activities, including geotechnical investigations and establishment of mitigation measures, and minor upgrading and repair along the coastal road and rail route existing as at 14 November 2016

**project** means the restoration of a safe and resilient coastal route for road and rail from 330 km MNL (north of Tunnel 24, which is north of Tuamarina; NZTM: 1680440; 5414638) to 125 km MNL (south of Phoebe Station, which is inland from Cheviot; NZTM: 1618705; 5265446)

**working day** has the meaning given in clause 3(1) of this order.

*General conditions (to apply to all resource consents)*

## 3 Iwi Adviser

- (1) Before starting construction works, the consent holder must invite each of the relevant mana whenua (for the particular works) to appoint 1 Iwi Adviser (col-



lectively, the **Iwi Adviser**) to undertake the roles and responsibilities as set out in these conditions.

- (2) The Iwi Adviser will be supported by a team of cultural monitors, mandated by the relevant mana whenua, who can provide on-site guidance to the consent holder to enable effective management of cultural indicators.
- (3) The consent holder must invite the Iwi Adviser to provide cultural indicators covering traditional associations, mahinga kai, cultural stream health, and cultural heritage.
- (4) The consent holder must take into account any such cultural indicators in the preparation of any plans required under these conditions.
- (5) The requirements in this clause are considered to be satisfied if, at any time, the appointed Iwi Adviser is unavailable or unwilling to undertake the roles and responsibilities set out in these conditions.

#### **4 Restoration liaison group**

- (1) At least 20 working days before starting construction works, the consent holder must invite representatives (who have authority to make decisions on behalf of their organisation) from the Council and any other relevant local authority, Heritage New Zealand Pouhere Taonga, the Department of Conservation, relevant mana whenua, and the Kaikōura Marine Guardians to be part of a restoration liaison group.
- (2) The purpose of the restoration liaison group is to help inform the design, management, and monitoring of all construction works.
- (3) The consent holder must—
  - (a) prepare terms of reference for the restoration liaison group to be discussed and agreed (by consensus, if possible) at the group's first meeting; and
  - (b) keep a record of any comments provided by the restoration liaison group with respect to the design, management, and monitoring of the construction works; and
  - (c) provide an explanation to the restoration liaison group of how the comments have been taken into account.
- (4) If the restoration liaison group cannot, by consensus, agree on the terms of reference at its first meeting, the terms of reference must be determined by majority vote (with 1 vote for each organisation represented on the group, including the consent holder). If votes on the terms of reference are tied, the consent holder has a casting vote.

#### **5 Construction Environmental Management Plan**

- (1) The consent holder must prepare a Construction Environmental Management Plan (**CEMP**) for the construction works.

- (2) The CEMP must include—
- (a) the roles and responsibilities of construction management staff, including the overall manager responsible for the control of erosion and sediment:
  - (b) a description of the training and education programme that will be implemented to ensure compliance with conditions:
  - (c) procedures for hazard, including fire hazard, identification, and control:
  - (d) the details of at least 2 emergency contacts and responders who must be contactable 24 hours 7 days a week during construction and have authority to authorise immediate response actions:
  - (e) the contact details of any construction staff living on site during the project construction:
  - (f) methods for responding to queries and complaints:
  - (g) methods for amending and updating the CEMP as required:
  - (h) details of the process to identify, record, and investigate incidents:
  - (i) details of how the project ecological principles will guide environmental outcomes.
- (3) At least 3 working days before finalising the CEMP, the consent holder must invite comments from the members of the restoration liaison group and must have regard to any such comments when finalising the CEMP.
- (4) The consent holder must—
- (a) implement the CEMP for the duration of construction works; and
  - (b) provide a copy of the CEMP to the Council for information before starting construction works.

### *Earthworks*

## **6 Earthworks**

The consent holder must undertake all construction works in accordance with the best methods available at the time of construction to—

- (a) minimise the volume and area of the proposed earthworks required for the project through the design of batter slopes appropriate to expected soil types and geology:
- (b) maximise the effectiveness of erosion and sediment control measures associated with earthworks by minimising potential for sediment generation and sediment yield:
- (c) minimise (and, having regard to the purpose of the Hurunui/Kaikōura Earthquakes Recovery Act 2016, take all reasonable steps in the circumstances to avoid) adverse effects on freshwater and marine water envir-

onments within or beyond the project boundary, with particular regard to reducing opportunities for the project to generate sediment:

- (d) minimise (and, having regard to the purpose of the Hurunui/Kaikōura Earthquakes Recovery Act 2016, take all reasonable steps in the circumstances to avoid) effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna within the project boundary.

## 7 Erosion and Sediment Control Plan

- (1) The consent holder must prepare an Erosion and Sediment Control Plan or Plans (**ESCP**) for the construction works to identify how the objectives in clause 6 will be met.
- (2) The ESCP must specify the following:

### *General*

- (a) appropriate structural and non-structural erosion and sediment control measures to be installed prior to and during all construction works for representative parts of the project, including earthworks, coastal works, and works within watercourses:
- (b) key environmental risks, particularly in relation to geographic form and the receiving environment:
- (c) the approach and procedures for ensuring advance warning of a rainfall event:
- (d) procedures for decommissioning the erosion and sediment control measures:
- (e) procedures for determining staging and sequencing of earthworks:
- (f) methods for amending and updating the ESCP as required:

### *Responsibilities*

- (g) the names of—
  - (i) appropriately qualified and experienced staff to manage the erosion and sediment control devices, associated maintenance procedures, and monitoring requirements:
  - (ii) staff directly responsible for supervising installation, maintenance, and decommissioning of erosion and sediment control devices and the associated works:

### *Incident management*

- (h) the process to identify, record, and investigate incidents that result in the release or accidental discharge of contaminants or material into any watercourse due to structural failure of any erosion and sediment control measures:

*Visual assessment*

- (i) a procedure for ongoing visual assessments of all erosion and sediment control measures, including details of analysis of trends in erosion and sediment control performance and consequential erosion and sediment control amendments.
- (3) If any erosion and sediment control measure fails, the consent holder must engage a suitably qualified and experienced ecologist to undertake an ecological survey of any affected areas as soon as is reasonably practicable having regard to the purpose of the Hurunui/Kaikōura Earthquakes Recovery Act 2016. In the event that significant adverse effects are identified by such a survey, the consent holder, in consultation with the Council, must develop and implement appropriate remedial measures (which may include offsets) commensurate to the scale of the effects.
- (4) At least 5 working days before starting construction works, the consent holder must,—
- (a) if the ESCP is prepared in accordance with the New Zealand Transport Agency's *Erosion and Sediment Control Guidelines for State Highway Infrastructure* (September 2014), submit a hard copy of the ESCP to the Council for its information; or
  - (b) if the ESCP is not prepared in accordance with those guidelines, submit a hard copy of the ESCP to the Council for certification that it meets the requirements of subclauses (1) and (2). If the consent holder has not received any response from the Council within 5 working days of submitting the ESCP, the ESCP is deemed to have been certified.
- (5) The consent holder must implement the ESCP submitted in accordance with subclause (4)(a), or certified in accordance with subclause (4)(b), for the duration of the construction works.

*Erosion and sediment control criteria*

- (6) At all practical times, streamworks activities and associated construction works must be undertaken with stream diversions in place to accommodate up to the 20-year ARI rain event.

*Erosion and sediment control device requirements*

- (7) The consent holder must design, construct, and maintain all erosion and sediment control measures to comply with the guidelines referred to in subclause (4)(a).

**8 Dust management**

The consent holder must prevent, as far as practicable, dust that arises from construction activities from spreading beyond the boundary of the project area.

**9 Contaminated land**

- (1) Subclauses (2) and (3) apply if the consent holder undertakes earthworks on contaminated land.
- (2) The consent holder must dispose of any material removed from a site identified as contaminated land at a facility authorised to receive material of that kind.
- (3) The consent holder must take all practicable measures to—
  - (a) control the discharge of soil and stormwater from contaminated land to waterways:
  - (b) maintain the integrity of any structure designed to contain contaminated soil or other contaminated materials:
  - (c) reinstate the soil to an erosion resistant state at the completion of the earthworks.
- (4) In this clause, **contaminated land** means land to which the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 would apply.

*Works in watercourse***10 Works in watercourse**

- (1) All construction works in a watercourse must be carried out in accordance with an ESCP prepared in accordance with clause 7.
- (2) At all practical times, streamworks activities and associated construction works must be undertaken with stream diversions in place to accommodate up to the 20-year ARI rain event.

**11 Requirements for streamworks**

- (1) Permanent works in any watercourse (for example, all viaducts, bridges, culverts, and permanent stream diversions) must—
  - (a) allow for the 100-year ARI rain event:
  - (b) take all reasonable steps in the circumstances, having regard to the purpose of the Hurunui/Kaikōura Earthquakes Recovery Act 2016, to avoid stream loss where threatened or at risk species are present, and otherwise minimise stream loss:
  - (c) be designed by a suitably qualified and experienced engineer and a suitably qualified and experienced ecologist.
- (2) Permanent culvert design must—
  - (a) minimise flooding effects:
  - (b) address the risks of non-performance, such as blockage, taking into account the risk of a soil or rock debris flow:

- (c) unless subclause (3) applies, incorporate fish passage elements to enable all aquatic species that are or are expected (by a suitably qualified ecologist) to be present to migrate into and through each culvert for 300 days of the year on a long-term average basis (that is, considering the velocities and flow depths associated with the 10th percentile to 90th percentile flow range within the specific culvert and the locomotive limitations of the target species):
  - (d) incorporate energy dissipation and erosion control measures to minimise the occurrence of bed scour and bank erosion in receiving environments using the best practicable option.
- (3) Fish passage must be provided and maintained on all permanent culverts in accordance with subclause (2)(c) unless a suitably qualified ecologist deems it unnecessary. In that case, appropriate data and reasons for this decision must be provided with the design drawings to the Council (*see* subclause (4)). The Department of Conservation must also be advised if culverts that do not provide fish passage are necessary.
- (4) At least 10 working days before starting permanent works within a watercourse, the consent holder must submit hard copies of the design drawings for permanent culverts (including fish passage), bridges, and stream diversions to the Council for certification that those details meet the requirements of clause 10 and subclauses (1) to (3). If the consent holder has not received a response from the Council within 5 working days after submitting the design drawings, the consent holder is deemed to have certification and may commence the works within a watercourse.
- (5) All permanent works in a watercourse must be carried out in accordance with designs certified under subclause (4).
- (6) The consent holder must ensure that any machinery or equipment used in the activities authorised by the consent—
  - (a) is not stored in or on the bed or banks of the watercourse; and
  - (b) is disposed of in an appropriate manner, and in a place where it will not adversely affect the stream channel or impede the flow of water.
- (7) The consent holder must ensure that—
  - (a) no machinery leaking fuel, lubricants, hydraulic fluids, or solvents is operated within a watercourse or near a watercourse where runoff may enter water:
  - (b) no refuelling of any vehicles, machinery, or equipment may take place within the bed of a watercourse, or in a position where spills may enter water:
  - (c) the storage of fuel or contaminants adjacent to a watercourse does not result in any fuel or contaminants entering water:

- (d) other fuels and lubricants, but excluding sediment, are not released to water in a watercourse.
- (8) The consent holder must ensure that construction material, demolition material, and any subsequent materials from repair and maintenance activities that are authorised by the consent and that are no longer required as part of the construction works are removed on completion of the construction works and disposed of in an appropriate manner and in a place where they will not affect floodwaters.
- (9) The consent holder must comply with all notices and guidelines issued by Biosecurity New Zealand that relate to preventing the spread of the pest organism *Didymo* (*Didymosphenia geminata*).

#### *Stormwater discharge*

### **12 Stormwater discharge**

- (1) The consent holder must use coarse sediment traps where higher sediment loads are expected, such as sediment traps for sediment eroded off rock cuts.
- (2) New land drains must be designed to accommodate the 20-year ARI rain event, and must include appropriate erosion control.
- (3) The consent holder must document the operation and maintenance requirements of the stormwater treatment devices, including sediment traps, within 3 months after the completion of the construction works. The documents must be submitted to the Council.

#### *Flooding*

- (4) The consent holder must design any new permanent culvert to ensure that any headwater ponding upstream of the culvert in the 100-year ARI rain event does not cause any significant adverse effect.

#### *Coastal works*

### **13 Coastal works**

- (1) All works in the CMA must be carried out in accordance with an ESCP prepared in accordance with clause 7.
- (2) Permanent works in the CMA (for example, sea walls, rock revetments, or groynes) must be designed by a suitably qualified and experienced engineer and a suitably qualified and experienced ecologist, having regard to the project ecological principles, and must consider and incorporate measures as far as practicable to address the effects of climate change.
- (3) The consent holder must maintain any construction site in good order and, where appropriate, remedy, as far as practicable, any damage and disturbance of the foreshore or seabed caused by plant and equipment during construction.

- (4) The structures permitted to occupy part of the CMA by the consent must be maintained in good and sound condition, and any repairs and reinstatement that are necessary must be made.

#### **14 Construction machinery and maintenance**

- (1) All vehicles and equipment entering the CMA associated with the exercise of the consent must be in a good state of repair and free of any fuel or oil leaks.
- (2) No machinery may be left within the intertidal zone during high-tide periods in a position where it could come into contact with coastal water.
- (3) The consent holder must ensure that an oil spill response kit is held on site, by the person who is to carry out the work, during the period of construction, repair, or maintenance works.
- (4) Fuelling and maintenance of plant and equipment used during any construction, repair, or maintenance work must not be carried out in the CMA or in any other location near the site where fuel or oil could enter the CMA.
- (5) The consent holder must, on becoming aware that any contaminant associated with the consent holder's operations has escaped otherwise than in conformity with the consent,—
  - (a) immediately take such action or carry out any work that may be necessary to stop or contain the escape; and
  - (b) immediately notify the following, by telephone, of the escape:
    - (i) the Council's monitoring manager; and
    - (ii) the Department of Conservation, if there is imminent risk from the escape of contaminant of adverse effects on any at risk or threatened species, or on any marine mammals; and
  - (c) take all reasonable steps, having regard to the purpose of the Hurunui/Kaikōura Earthquakes Recovery Act 2016, to remedy or mitigate any adverse effects on the environment resulting from the escape.

#### **15 Construction noise**

- (1) Construction noise must comply, as far as practicable, with the long-term duration limits provided in Table 2 of NZS 6803:1999.
- (2) The consent holder must take all practicable measures to reduce levels of noise from plant and equipment operating onsite during construction, including the generation of underwater noise.

#### **16 Ecology**

##### *Development of project ecological principles*

- (1) The consent holder must appoint a suitably qualified and experienced ecologist (a **project ecologist**) for the duration of the project to inform the design, management, and monitoring of all construction works.



- (2) Before starting construction works, the consent holder must develop ecological principles informed by the cultural indicators to guide the project design and environmental outcomes.
- (3) The consent holder must—
  - (a) provide a draft copy of the ecological principles to the members of the restoration liaison group for comment:
  - (b) if any comments are received within 3 working days after the draft is provided to the members of the restoration liaison group, have regard to those comments when finalising the ecological principles:
  - (c) when finalising the ecological principles, the consent holder must note any comments received from members of the restoration liaison group, along with an explanation of how those comments have been taken into account.
- (4) The consent holder must take the ecological principles into account when undertaking the construction works.

*Ecological scoping survey*

- (5) Before starting construction works, a suitably qualified and experienced ecologist (or ecologists) must, together with a suitably qualified and experienced ecologist nominated by Te Rūnanga o Ngāi Tahu (the **Ngāi Tahu project ecologist**), complete an ecological scoping survey of the relevant construction works area, and adjacent areas (within the designation), to identify any at risk or threatened flora or fauna (as defined in the current version of the New Zealand Threat Classification System), any taonga species (as defined in section 287 of the Ngai Tahu Claims Settlement Act 1998), and any marine mammals (as defined in the Marine Mammals Protection Act 1978) that may be significantly adversely affected during or as a result of construction.
- (6) The ecological scoping survey must be carried out in general accordance with the *Ecological Impact Assessment Guidelines* (Environment Institute of Australia and New Zealand, March 2015).
- (7) The consent holder must provide a copy of the final ecological scoping survey to each member of the restoration liaison group.

*Development of measures to minimise adverse effects*

- (8) If any flora or fauna (including taonga species and marine mammals) referred to in subclause (5) are identified, the project ecologist, in association with the wider project team, must develop and implement measures to avoid, as far as practicable (having regard to the purpose of the Hurunui/Kaikōura Earthquakes Recovery Act 2016), or to minimise, any adverse effects on those flora or fauna, taking into account the project ecological principles.
- (9) Any measures taken under subclause (8) must be monitored at regular intervals during the term of construction and reported every 2 months together with any

recommendations by the project ecologist, working with the Iwi Adviser, to change those measures.

- (10) The consent holder must provide a copy of each report prepared under sub-clause (9) to the members of the restoration liaison group.

### *Reclamation*

#### **17 Design**

- (1) The consent holder must provide to the Council design drawings of any area of proposed reclamation (including associated permanent CMA occupation and permanent structures) at least 10 working days before the proposed date of commencement of the construction of that reclamation or structure.
- (2) Any reclamation and construction methodology must be designed by a suitably qualified and experienced engineer and a suitably qualified and experienced ecologist, and must consider—
  - (a) the risk profile of the area, including soil and geology characteristics, geographic form, and receiving environment:
  - (b) operational safety and resilience:
  - (c) opportunities for tourism, for example, viewing areas:
  - (d) the effects of climate change:
  - (e) any opportunities to enhance public access to and along the CMA:
  - (f) any opportunities to enhance paua and other marine species' habitat:
  - (g) the project ecological principles:
  - (h) landscape and amenity values.
- (3) Any reclamation must be carried out in accordance with an ESCP prepared in accordance with clause 7.

#### **18 Fill and spoil placement**

All fill material imported from outside the project area to be used in a reclamation must be in accordance with the Ministry for the Environment's "cleanfill" definition, as detailed in publication ME: 418, *A Guide to the Management of Cleanfills* (2002) or subsequent updates.

#### **19 Construction machinery and maintenance**

- (1) All vehicles or equipment entering the CMA during the exercise of the consent must be in a good state of repair and free of any fuel or oil leaks.
- (2) No machinery may be left within the intertidal zone during high-tide periods in a position where it could come into contact with coastal water.
- (3) The consent holder must ensure that an oil spill response kit is held on site, by the person who is to carry out the work, during the period of construction.

- (4) Fuelling and maintenance of plant and equipment used during any construction or maintenance work must not be carried out in the CMA or in any other location near the site where fuel or oil could enter the coastal marine area. If an accidental spillage to land occurs, all contaminated soil must be collected and removed to a disposal site that is authorised to receive such material.
- (5) The consent holder must, on becoming aware that any contaminant associated with the consent holder's operations has escaped otherwise than in conformity with the consent,—
  - (a) immediately take such action or carry out any work that may be necessary to stop or contain the escape; and
  - (b) immediately notify the following, by telephone, of the escape:
    - (i) the Council's monitoring manager; and
    - (ii) the Department of Conservation, if there is imminent risk from the escape of contaminant of adverse effects on any at risk or threatened species, or on any marine mammals; and
  - (c) take all reasonable steps, having regard to the purpose of the Hurunui/Kaikōura Earthquakes Recovery Act 2016, to remedy or mitigate any adverse effects on the environment resulting from the escape.

## **20 Construction noise**

- (1) Construction noise must comply, as far as practicable, with the long-term duration limits provided in Table 2 of NZS 6803:1999.
- (2) The consent holder must take all practicable measures to reduce noise levels from plant and equipment operating onsite during construction, including the generation of underwater noise.

## **21 Dust management**

The consent holder must prevent, as far as practicable, dust that arises from construction activities from spreading beyond the boundary of the project area.

### *Review*

## **22 Review of conditions**

For the purposes of section 128(1)(a) of the RMA, the Council may, at any time within 6 months after the second anniversary of the date on which the constructions are completed (and at any time within 6 months after each anniversary occurring every 5 years after that second anniversary), review the conditions in this schedule in order to—

- (a) deal with any adverse effect on the environment that may arise from the exercise of the consent and that is appropriate to deal with at a later stage;
- (b) review the adequacy of any monitoring.

## Schedule 2

### Designation conditions

cl 17

#### 1 General

- (1) The conditions in this schedule apply to a notice of a requirement to alter the boundaries of a designation referred to in clause 17 of this order.
- (2) The conditions in clauses 3 to 11 of this schedule relate to construction of the project and apply only to construction works. Once construction of the project is complete, the conditions no longer apply and may be removed from the designation.
- (3) As soon as practicable following completion of construction of the project to which the notice relates, the requiring authority must give notice to the Council in accordance with section 182 of the Resource Management Act 1991 to remove those parts of the designation that are not required for the long-term operation, maintenance, and mitigation of effects of the project.

#### 2 Definitions

In this schedule,—

**construction works** means activities (other than minor works) undertaken to fully restore a safe and resilient coastal route for road and rail from 330 km MNL (north of Tunnel 24, which is north of Tuamarina; NZTM: 1680440; 5414638) to 125 km MNL (south of Phoebe Station, which is inland from Cheviot; NZTM: 1618705; 5265446)

**Council** means,—

- (a) in the case of a resource consent granted by a territorial authority, the territorial authority in whose district the works are to be undertaken;
- (b) in the case of a resource consent granted by a regional council, the regional council in whose region the works are to be undertaken

**minor works** means preliminary activities, including geotechnical investigations and establishment of mitigation measures, and minor upgrading and repair along the coastal road and rail route existing as at 14 November 2016

**project** means the restoration of a safe and resilient coastal route for road and rail from 330 km MNL (north of Tunnel 24, which is north of Tuamarina; NZTM: 1680440; 5414638) to 125 km MNL (south of Phoebe Station, which is inland from Cheviot; NZTM: 1618705; 5265446)

**working day** has the meaning given in clause 3(1) of this order.

#### 3 Stakeholder and communications plan

- (1) Before starting construction works, the requiring authority must prepare a draft stakeholder and communications plan, to be finalised within 30 working days

after the start of the construction works, that sets out the procedures detailing how the public and stakeholders will be communicated with throughout the construction period.

- (2) The purpose of the stakeholder and communications plan is to provide the framework for—
  - (a) informing the community of construction progress, including proposed hours of operation outside normal working hours and contact details for further information:
  - (b) engaging with the community in order to foster good relationships and to provide opportunities to learn about the project:
  - (c) providing early information on key project milestones:
  - (d) identifying stakeholders such as educational facilities, iwi and hapu groups, community groups, business groups, residents' organisations, the Council, the regional council, and local boards:
  - (e) responding to queries and complaints.
- (3) The requiring authority must implement the stakeholder and communications plan for the duration of the construction works.

#### **4 Iwi Adviser**

- (1) Before starting construction works, the requiring authority must invite each of the relevant mana whenua (for the particular works) to appoint 1 Iwi Adviser (collectively, the **Iwi Adviser**) to undertake the roles and responsibilities set out in these conditions.
- (2) The Iwi Adviser will be supported by a team of cultural monitors, mandated by the relevant mana whenua, who can provide on-site guidance to the consent holder to enable effective management of cultural indicators.
- (3) The requiring authority must invite the Iwi Adviser to provide cultural indicators covering traditional associations, mahinga kai, cultural stream health, and cultural heritage.
- (4) The requiring authority must have regard to any such cultural indicators in the preparation of any plans required under these conditions.
- (5) The requirements in this clause are considered to be satisfied if, at any time, the appointed Iwi Adviser is unavailable or unwilling to undertake the roles and responsibilities set out in these conditions.

#### **5 Restoration liaison group**

- (1) At least 20 working days before starting construction works, the requiring authority must invite representatives (who have the authority to make decisions on behalf of their organisation) from the Council and any other relevant local authority, Heritage New Zealand Pouhere Taonga, the Department of Conser-

vation, relevant mana whenua, and the Kaikōura Marine Guardians to be part of a restoration liaison group.

- (2) The purpose of the restoration liaison group is to help inform the design, management, and monitoring of all construction works.
- (3) The requiring authority must—
  - (a) prepare terms of reference for the restoration liaison group to be discussed and agreed (by consensus, if possible) at the group’s first meeting; and
  - (b) keep a record of any comments provided by the restoration liaison group with respect to the design, management, and monitoring of the construction works; and
  - (c) provide an explanation to the restoration liaison group of how the comments have been taken into account.
- (4) If the restoration liaison group cannot, by consensus, agree on the terms of reference at its first meeting, the terms of reference must be determined by majority vote (with 1 vote for each organisation represented on the group, including the requiring authority). If votes on the terms of reference are tied, the requiring authority has a casting vote.

## 6 Construction noise and vibration

### *Noise criteria*

- (1) Construction noise must comply, as far as practicable, with the following criteria in accordance with NZS 6803:1999 in respect of residential receivers:

Day	Time	dB LAeq(T)	dB LAmax
Weekdays	0630–0730	55	75
	0730–1800	70	85
	1800–2000	65	80
	2000–0630	45	75
Saturdays	0630–0730	45	75
	0730–1800	70	85
	1800–2000	45	75
	2000–0630	45	75
Sundays and Public Holidays	0630–0730	45	75
	0730–1800	55	85
	1800–2000	45	75
	2000–0630	45	75

### Notes

- 1 “(T)” is a representative assessment duration between 10 and 60 minutes.
- 2 Measurement and assessment of construction and air-blast noise must be undertaken in accordance with NZS 6803:1999.

- (2) Air-blast noise must comply with a peak sound level of 120 dBC at 1 metre from the most exposed facade of any occupied building.

*Vibration criteria*

- (3) Construction vibration must comply, as far as practicable, with the following criteria:

Receiver	Location	Detail	Category A	Category B
Occupied PPFs*	Inside the building	Night-time 2000h–0630h	0.3 mm/s PPV	1 mm/s PPV
		Daytime 0630h– 2000h	1 mm/s PPV	5 mm/s PPV
		Blasting— vibration	5 mm/s PPV	10 mm/s PPV
Other occupied buildings	Inside the building	Daytime 0630h– 2000h	2 mm/s PPV	5 mm/s PPV
All other buildings	Building foundation	Vibration— transient (including blasting)	5 mm/s PPV	BS 5228–2 Table B.2
		Vibration— continuous		BS 5228–2 50% of Table B.2 values

\*For vibration, protected premises and facilities (PPFs) are dwellings, educational facilities, boarding houses, homes for the elderly and retirement villages, marae, hospitals that contain in-house patient facilities, and buildings used as temporary accommodation (for example, motels and hotels).

**Note:** Measurements of construction vibration must be undertaken in accordance with German Standard DIN 4150-3:1999 *Structural Vibration Part 3: Effects of vibration on structures*.

## 7 Construction noise and vibration management plan

- (1) Before starting construction works, the requiring authority must prepare a construction noise and vibration management plan, to be finalised within 30 working days after the start of the construction works, that identifies how the requirements in clause 6 will be met.
- (2) The construction noise and vibration management plan must identify the best practicable option for management and mitigation of all construction noise and vibration, including where full compliance with the criteria in clause 6 cannot be achieved.
- (3) The construction noise and vibration management plan must, at a minimum, include the information required by NZS 6803:1999, Annex E2. The term “noise” in that document must be interpreted as “noise and vibration”.
- (4) The requiring authority must implement the construction noise and vibration management plan for the duration of the construction works.

- (5) If measured or predicted vibration levels exceed the Category A criteria in clause 6(3), a suitably qualified expert must be engaged to assess and manage construction vibration to comply with the Category A criteria as far as practicable.
- (6) If measured or predicted vibration levels exceed the Category B criteria in clause 6(3), monitoring of vibration levels at the relevant buildings must be undertaken by a suitably qualified expert to identify, assess, and manage any vibration effects on those buildings.

## **8 Landscape design framework**

- (1) The requiring authority must design and construct the project to appropriately integrate the permanent works into the surrounding landscape and topography, having regard to—
  - (a) the local landscape character and contexts along the highway route; and
  - (b) tourism opportunities (for example, viewing areas) along the highway route.
- (2) Within 60 working days after starting construction works, the requiring authority must prepare a landscape design framework to identify how the requirements in subclause (1) will be met.
- (3) The landscape design framework must be consistent with the following design principles:
  - (a) designing for the context:
  - (b) supporting community cohesion:
  - (c) maintaining local connectivity:
  - (d) respecting Ngāi Tahu cultural heritage and other cultural heritage values:
  - (e) designing with nature:
  - (f) creating a positive road user experience:
  - (g) achieving a low-maintenance design.
- (4) The landscape design framework must be prepared by a suitably qualified urban designer and landscape architect.
- (5) In preparing the landscape design framework, the requiring authority must invite comments from the Iwi Adviser.

## **9 Construction lighting**

- (1) Lighting of any yard, compound, construction area, or office complex or construction area located within the designation must be designed to avoid light spill beyond the designation.
- (2) Glare from any lighting must be kept below the recommendations given in AS 4282–1997 *Control of the Obtrusive Effects of Outdoor Lighting*, Tables 2.1 and 2.2.



## 10 Ecology

### *Development of project ecological principles*

- (1) The requiring authority must appoint a suitably qualified and experienced ecologist (a **project ecologist**) for the duration of the project to inform the design, management, and monitoring of all construction works.
- (2) Before starting construction works, the requiring authority must develop ecological principles informed by cultural indicators to guide the project design and environmental outcomes.
- (3) The requiring authority must—
  - (a) provide a draft copy of the ecological principles to the members of the restoration liaison group for comment; and
  - (b) if any comments are received within 3 working days after the draft is provided to the members of the restoration liaison group, have regard to those comments when finalising the ecological principles; and
  - (c) when finalising the ecological principles, the requiring authority must note any comments received from members of the restoration liaison group, along with an explanation of how those comments have been taken into account.
- (4) The requiring authority must take into account the ecological principles when undertaking the construction works.

### *Ecological scoping survey*

- (5) Before starting construction works, a suitably qualified and experienced ecologist (or ecologists) must, together with a suitably qualified and experienced ecologist nominated by Te Rūnanga o Ngāi Tahu (the **Ngāi Tahu project ecologist**), complete an ecological scoping survey of the relevant construction works area, and adjacent areas (within the designation), to identify any at risk or threatened flora or fauna (as defined in the current version of the New Zealand Threat Classification System), any taonga species (as defined in section 287 of the Ngai Tahu Claims Settlement Act 1998), and any marine mammals (as defined in the Marine Mammals Protection Act 1978) that may be significantly adversely affected during or as a result of construction.
- (6) The ecological scoping survey must be carried out in general accordance with the *Ecological Impact Assessment Guidelines* (Environment Institute of Australia and New Zealand, March 2015).
- (7) The requiring authority must provide a copy of the final ecological scoping survey to each member of the restoration liaison group.

### *Development of measures to minimise adverse effects*

- (8) If any flora or fauna (including taonga species or marine mammals) referred to in subclause (5) are identified, the project ecologist, in association with the wider project team, must develop and implement measures to avoid, as far as

practicable (having regard to the purpose of the Hurunui/Kaikōura Earthquakes Recovery Act 2016), or to minimise, any adverse effects on those flora or fauna, taking into account the project ecological principles.

- (9) Any measures taken under subclause (8) must be monitored at regular intervals during the term of construction and reported every 2 months together with any recommendations by the project ecologist, working with the Iwi Adviser, to change those measures.
- (10) The requiring authority must provide a copy of each report prepared under subclause (9) to the members of the restoration liaison group.

## 11 Cultural, heritage, and archaeological sites

- (1) Before starting construction works, the requiring authority must undertake a desktop assessment of publicly available information to identify recorded archaeological sites and entries on the New Zealand Heritage List/Rārangi Kōrero, and any archaeological and heritage sites listed in a relevant regional or district plan, within the project area. The assessment must also include any sites identified by the Iwi Adviser under clause 4(2).
- (2) For all sites identified in subclause (1), a suitably qualified and experienced archaeologist and the Iwi Adviser must be present during construction works that may affect the site to—
  - (a) minimise effects on cultural, heritage, and archaeological sites, where practicable:
  - (b) record all cultural, heritage, and archaeological sites within the designation.
- (3) Any information recorded under subclause (2) must be provided to Heritage New Zealand Pouhere Taonga and, where cultural, heritage, and archaeological sites are of significance to iwi, the same information must be provided to the Iwi Adviser.
- (4) The requiring authority must comply with clause 3 (relating to procedures in the event koiwi are discovered) and clause 4 (relating to custody of taonga, excluding koiwi) of NZTA Minimum Standard Z/22—Accidental Discovery Procedures.

**Advice Note:** The Ministry for Culture and Heritage must also be advised of any taonga tūturu finds within 28 days after their discovery in accordance with the Protected Objects Act 1975. The final repatriation of taonga tūturu is a matter for the Ministry of Culture and Heritage in consultation with iwi.

An emergency authority from Heritage New Zealand Pouhere Taonga is required for any work that impacts on recorded or unrecorded archaeological sites as defined in the Heritage New Zealand Pouhere Taonga Act 2014.

### Schedule 3

## Conditions for permissions under Acts relating to conservation and for Crown reserves

cls 19, 22, 23, 24, 25, 26

### 1 General

The conditions in this schedule apply to—

- (a) a concession for restoration work in a conservation area or in a reserve vested in the Crown under the Conservation Act 1987 as modified by clause 19 of this order:
- (b) a permit to hold or take marine mammals under the Marine Mammals Protection Act 1978 as modified by clause 22 of this order:
- (c) a consent to undertake restoration work in Hikurangi Marine Reserve under the Marine Reserves Act 1971 as modified by clause 23 of this order:
- (d) an authority to enter the Ōhau New Zealand Fur Seal Sanctuary under the Ōhau New Zealand Fur Seal Sanctuary (Restrictions) Notice 2014 as modified by clause 24 of this order:
- (e) a concession for restoration work in a wildlife sanctuary, wildlife refuge, or wildlife management reserve under the Wildlife Act 1953 as modified by clause 25 of this order:
- (f) an authority to take or kill wildlife or marine wildlife under the Wildlife Act 1953 as modified by clause 26 of this order.

### 2 Definition of project

In this schedule,—

**project** means the restoration of a safe and resilient coastal route for road and rail from 330 km MNL (north of Tunnel 24, which is north of Tuamarina; NZTM: 1680440; 5414638) to 125 km MNL (south of Phoebe Station, which is inland from Cheviot; NZTM: 1618705; 5265446)

**working day** has the meaning given in clause 3(1) of this order.

### 3 Ecology

*Development of project ecological principles*

- (1) The agency must appoint a suitably qualified and experienced ecologist (a **project ecologist**) for the duration of the project to inform the design, management, and monitoring of all construction works.
- (2) Before starting works, the agency must develop ecological principles informed by the cultural indicators to guide the works and environmental outcomes.
- (3) The agency must—

- (a) provide a draft copy of the ecological principles to the Department of Conservation; and
  - (b) if any comments are received within 3 working days after the draft is provided to the department, have regard to those comments when finalising the ecological principles.
- (4) The agency must take the ecological principles into account when undertaking the works.

*Ecological scoping survey*

- (5) Before starting the works, a suitably qualified and experienced ecologist (or ecologists) must, together with a suitably qualified and experienced ecologist nominated by Te Rūnanga o Ngāi Tahu (the **Ngāi Tahu project ecologist**), complete an ecological scoping survey of the relevant works area, and adjacent areas, to identify any at risk or threatened flora or fauna (as defined in the current version of the New Zealand Threat Classification System), any taonga species (as defined in section 287 of the Ngai Tahu Claims Settlement Act 1998), or any marine mammals (as defined in the Marine Mammals Protection Act 1978) that may be significantly adversely affected during or as a result of the works.
- (6) The ecological scoping survey must be carried out in general accordance with the *Ecological Impact Assessment Guidelines* (Environment Institute of Australia and New Zealand, March 2015).
- (7) The agency must provide a copy of the final ecological scoping survey to the Department of Conservation.

*Development of measures to minimise adverse effects*

- (8) If any flora or fauna (including taonga species or marine mammals) referred to in subclause (5) are identified, the project ecologist, in association with the wider project team, must develop and implement measures to avoid, as far as practicable (having regard to the purpose of the Hurunui/Kaikōura Earthquakes Recovery Act 2016), or to minimise, any adverse effects on those flora or fauna, taking into account the project ecological principles.
- (9) Any measures taken under subclause (8) must be monitored at regular intervals during the term of construction and reported every 2 months together with any recommendations by the project ecologist, working with the Iwi Adviser, to change those measures.
- (10) The agency must—
- (a) provide a copy of each report prepared under subclause (9) to the Department of Conservation and Te Rūnanga o Ngāi Tahu; and
  - (b) work with the Department of Conservation and Te Rūnanga o Ngāi Tahu, to take all reasonable steps in the circumstances, having regard to the purpose of the Hurunui/Kaikōura Earthquakes Recovery Act 2016, to implement any changes recommended in the report.

**4 Marine mammals**

- (1) If injured marine mammals are found that need to be assessed or euthanased, the agency must contact—
  - (a) the Department of Conservation’s Wairau/Renwick Office on 03 572 9100 between the hours of 8 am and 4.30 pm (Monday to Friday) or after hours on 0800 DOCHOTline (0800 362 468); and
  - (b) Te Rūnanga o Ngāi Tahu.
- (2) The agency must ensure that—
  - (a) all staff who handle marine mammals are instructed in marine mammal handling techniques by a nominated staff member of the Department of Conservation; and
  - (b) all marine mammals are handled in accordance with those techniques and Ngāi Tahu tikanga, in particular, but not limited to,—
    - (i) using only the minimum force necessary to shift marine mammals; and
    - (ii) taking all reasonable steps in the circumstances to avoid separating young from their mothers.
- (3) Following the death of a marine mammal, the carcass must be disposed of in a manner consistent with Ngāi Tahu tikanga and agreed between the agency, the nominated Department of Conservation staff member, and the Iwi Adviser, allowing where practicable for cultural recovery of the marine mammal.
- (4) Any discovery of an injured marine mammal, handling of a marine mammal, or discovery of the death of a marine mammal must be recorded as soon as practicable after it occurs and a summary report must be prepared and forwarded to the Department of Conservation Wairau/Renwick Office Operations Manager and Te Rūnanga o Ngāi Tahu at the end of each calendar month.

**5 Activities affecting particular land and areas**

Any activity associated with the project that affects land held under the Reserves Act 1977 or the Conservation Act 1987, or any area subject to the Kaikōura (Te Tai o Marokura) Marine Management Act 2014, must be undertaken by the agency so as to avoid as far as reasonable in the circumstances (having regard to the purpose of the Hurunui/Kaikōura Earthquakes Recovery Act 2016), or to minimise, adverse effects on the values protected by the relevant Act applying to the land or area.

**Schedule 4**  
**Conditions for approvals under Freshwater Fisheries Regulations**  
**1983**

cl 21

**1 General**

The conditions in this schedule apply to an approval under the Freshwater Fisheries Regulations 1983.

**2 Conditions for approval**

- (1) Unless subclause (2) applies, permanent culvert design must incorporate fish passage elements to enable all aquatic species that are or are expected (by a suitably qualified ecologist) to be present to migrate into and through each culvert for 300 days of the year on a long-term average basis (that is, considering the velocities and flow depths associated with the 10th percentile to 90th percentile flow range within the specific culvert and the locomotive limitations of the target species).
- (2) Fish passage must be provided and maintained on all permanent culverts in accordance with subclause (1) unless a suitably qualified ecologist deems it unnecessary or infeasible. In that case, appropriate data and reasons for the ecologist's decision must be provided to the Department of Conservation.
- (3) At least 10 working days before starting permanent works within a watercourse, the consent holder must submit hard copies of the design drawings for permanent culverts (including fish passage elements) to the Department of Conservation for the Department's information.
- (4) All permanent works in a watercourse must be carried out in accordance with designs referred to in subclause (3).

## Schedule 5

### Form

cl 35

#### Form

Notice of intention to take land for [*description of purpose*] in [*name of district*]

**To** [*full name, address*]

Take notice that—

- 1 The Minister [*describe portfolio*] proposes to take under the Hurunui/Kaikōura Earthquakes Recovery (Coastal Route and Other Matters) Order 2016 your interest in the land described in the Schedule of this notice.
- 2 The land is required for [*describe purpose*] and it is intended to use the land for [*describe purposes for which the land is to be used*].
- 3 A plan of the land intended to be taken is attached.

#### Reasons for taking land

- 4 The Minister [*describe portfolio*] considers it reasonably necessary to take your interest in the land for the following reasons: [*state reasons*].

#### Your right to compensation

- 5 This notice relates to the taking of your interest in the land and not to your right to compensation. Under the Public Works Act 1981, you are entitled to compensation if your interest in the land is taken. If this compensation cannot be agreed between you and the Minister [*describe portfolio*], it can be determined in separate proceedings before the Land Valuation Tribunal.

#### Warning

This notice concerns your rights over the land referred to. If you are in any doubt about its effect, you should obtain legal advice immediately.

**Do not delay.**

#### *Schedule*

#### **[Name] Land district**

[*Describe the land required to be taken, including the postal address or some other readily identifiable description of the place where the land is situated. Add legal description of land.*]

Date:

[*Signature*]

(for Minister [*describe portfolio*])

Michael Webster,  
Clerk of the Executive Council.

### Statement of reasons

This order is made under the Hurunui/Kaikōura Earthquakes Recovery Act 2016 (the **Act**) and its effect is temporary. It comes into effect on the day after it is made and is revoked on 31 March 2018. The Act enables orders to be made that grant exemptions from, modify, or extend the provisions of certain enactments. (For simplicity, a reference, in this statement of reasons, to the modification of provisions of an enactment includes the granting of an exemption from, and the extension of, the provisions of the enactment.)

This order primarily relates to State Highway 1 and the railway line known as the Main North Line (**MNL**), and to all land, infrastructure, and other property associated with those transport links, between 330 km MNL (north of Tunnel 24, which is north of Tuamarina; NZTM: 1680440; 5414638) and 125 km MNL (south of Phoebe Station, which is inland from Cheviot; NZTM: 1618705; 5265446) (the **coastal route**). The purpose of this order is to enable the New Zealand Transport Agency and Kiwi-Rail Holdings Limited (the **agencies**) to, without undue delay, restore the coastal route and to enable it to be used fully, effectively, and safely.

The order defines **restoration work** in *clause 3* to mean any activity that, because of or in connection with the Hurunui/Kaikōura earthquakes, is necessary or desirable to undertake to, without undue delay, restore the coastal route and enable it to be used fully, effectively, and safely. This definition includes any activity necessary or desirable for the repair and rebuilding of the coastal route or to enhance the safety and improve the resilience of the coastal route.

In addition to facilitating restoration work, the order also deems certain temporary depot, storage, and parking activities to be permitted activities under the Resource Management Act 1991, where they are necessary to—

- restore any road or rail line under the control of the New Zealand Transport Agency or KiwiRail that has been damaged by the earthquakes; or
- address disruption to the land transport system caused by the earthquakes.

This order has, in relation to restoration work carried out by an agency, the effect of modifying certain provisions of the following enactments:

- Resource Management Act 1991:
- Conservation Act 1987:



- Freshwater Fisheries Regulations 1983:
- Marine Mammals Protection Act 1978:
- Marine Reserves Act 1971:
- Ōhau New Zealand Fur Seal Sanctuary (Restrictions) Notice 2014:
- Wildlife Act 1953:
- Reserves Act 1977:
- Heritage New Zealand Pouhere Taonga Act 2014:
- Public Works Act 1981.

An order under section 7 of the Act may be made only on the recommendation of the “relevant Minister”. Section 8(1) of the Act provides that a relevant Minister must not recommend the making of an order unless the relevant Minister is satisfied that (among other things)—

- the order is necessary or desirable for the purpose of the Act; and
- the extent of the order is not broader than is reasonably necessary to address the matters that gave rise to the order.

The “relevant Minister” is the Minister responsible for the administration of the enactment the provisions of which this order modifies. Where there is more than 1 responsible Minister, the relevant Minister is each of those responsible Ministers acting together. For this order, the relevant Minister is the following Ministers acting together:

- the Minister for the Environment (as the Minister responsible for the administration of the Act modified in *Part 2*):
- the Minister of Conservation (as the Minister responsible for the administration of the enactments modified in *Parts 3 and 4*):
- the Minister of Arts, Culture and Heritage (as the Minister responsible for the administration of the Act modified in *Part 5*):
- the Minister for Land Information (as the Minister responsible for the administration of the Act modified in *Part 6*).

The effects of this order are set out below, together with a statement of the reasons, in each case, why the relevant Minister is satisfied of the matters in section 8(1) of the Act and considers it appropriate to recommend the making of this order.

Because part of the order relates to the Resource Management Act 1991, the relevant Minister also has to consider—

- the effects on the environment of any controls provided for in the order; and
- whether those controls avoid, remedy, or mitigate, any adverse effects.

The Minister for the Environment, as the relevant Minister for the Resource Management Act 1991, has considered the controls and this assessment is included in the reasons below.

*Modifications to Resource Management Act 1991*

This order makes the following modifications to the Resource Management Act 1991 (the **RMA**).

Any restoration work done by or on behalf of an agency that is not a permitted activity for the purposes of the RMA is a controlled activity for the purposes of the RMA (*clauses 5 and 6*).

Applications for a resource consent for restoration work are governed by either—

- *clause 11*, where an agency chooses to make an application under that clause. The *clause 11* process can only be used in the case of applications made on or before 31 March 2017 or before the end of a state of emergency or a transition period under the Civil Defence Emergency Management Act 2002; or
- *clauses 7 to 10* in any other case.

**Applications under clauses 7 to 10 (made after 31 March 2017 or after the end of a transition period)**

For an application for a resource consent for restoration work made under *clauses 7 to 10*,—

- the consent authority's power to impose conditions is restricted to matters of control specified in *clause 6*;
- the consent authority must notify its decision on the application within 21 working days of the application being lodged (*clause 8*).

An agency, when applying for a resource consent for restoration work, is not required to make the application in the prescribed form and manner (within the meaning of section 88(2) of the RMA). Instead, the requirements for an application are simplified (*clause 7*).

The consent authority must not publicly notify or give limited notification of an application (*clause 8*). Instead, the consultation process in *clauses 9 and 10* applies.

In considering an application for resource consent for restoration work, a consent authority is not required to have regard to some of the matters to which it would normally have regard when considering an application.

The consent authority is not required to have regard to any relevant provision of a national environmental standard, regulations, a national policy statement, a New Zealand coastal policy statement, a regional policy statement or proposed regional policy statement, or a plan or proposed plan.

In relation to an activity that requires a discharge permit, the consent authority—

- is not required to have regard to the nature of the discharge and the other matters specified in section 105 of the RMA;
- is deemed to be satisfied of the matters set out in section 107(2) of the RMA, which include that there are “exceptional circumstances” (*clause 8*).

As soon as possible after lodging an application for a resource consent for restoration work, the consent authority must invite written comments from specified persons, who will have 15 working days to make comments. Those persons do not qualify as submitters for the purposes of the RMA, and may not object or appeal under the RMA against the consent authority's decision on the application (*clause 9*).

Before making a decision on an application for a resource consent, the consent authority must consider, and prepare a summary of, the comments, and make the summary publicly available (*clause 10*).

### **Applications under clause 11 (made on or before 31 March 2017 or before the end of a transition period)**

An agency may choose to make an application using the process in *clause 11*, which has reduced time frames for granting resource consents and limits the consent authority's ability to impose conditions to the ability to recommend changes to the conditions in *Schedule 1*.

*Clause 11* effectively replicates the process for a requiring authority to confirm a notice of requirement for a designation, with sufficient modifications so that it applies to the granting of resource consents for controlled activities for restoration work. Under the normal RMA process for a designation, the territorial authority will consider and make recommendations on a designation (including recommended conditions) (section 171 of the RMA), after which the requiring authority makes a decision on whether to accept or reject the recommendation, in whole or in part (section 172 of the RMA).

Where *clause 11* applies, a consent authority may impose on the resource consent the conditions that relate to the activity under *Schedule 1*, except as modified through the following process:

- the consent authority may recommend amendments to those conditions, which the agency can accept or reject:
- if the agency rejects a recommended amendment, it must identify an alternative amendment and the conditions, as then amended, apply to the consent:
- there is no consultation on the application for the resource consent:
- the consent authority must notify its decision on the application within 3 or 7 working days (depending on the circumstances) (*clause 11*).

### **Other modifications to RMA**

*Clause 12* applies to restoration work that is done as emergency works under section 330 or 330B of the RMA and it requires certain environmental effects to be taken into account, unless the work is undertaken within the period of 10 working days of the date on which this order commences.

For land that is reclaimed as a consequence of restoration work, the relevant regional council and territorial authority have the powers, functions, and duties that each would have if the reclaimed land were part of the territorial authority's district (from

the time the land is reclaimed) and the commencement of any resource consent in respect of the reclaimed land is not delayed until a certificate is issued under section 245(5) of the RMA (*clause 13*). (Note that both the time by which advice of the activity must be given under section 330A(1) or 330B(2) and the time by which an application for a resource consent must be lodged under section 330A(2) or 330B(3) are extended by section 5 of the Hurunui/Kaikōura Earthquakes Emergency Relief Act 2016. The extended time frames apply until the repeal of that Act on 1 April 2018.)

*Clause 14* provides that the operation of the following in the relevant districts is a permitted activity:

- a temporary depot or storage facility that is reasonably incidental to restoration work or to any other activity necessary or desirable to restore any road or rail line under the control of an agency;
- a parking area for heavy motor vehicles that is necessary or desirable as a consequence of disruption to the land transport system caused by the earthquakes.

*Clause 15* provides that excavation and filling of the Waitohi Domain for the purposes of establishing a parking area on the domain is a controlled activity and that if the Marlborough District Council or the New Zealand Transport Agency apply for resource consent for the excavation and filling the consent must be granted on the conditions set out in *clause 9 of Schedule 1* (relating to contaminated land).

An agency intending to undertake restoration work on designation land is not required to submit an outline plan of work to the territorial authority (*clause 16*).

*Clause 17* applies if an agency gives a notice of requirement to alter the boundaries of a designation to a territorial authority, and the alteration is necessary for restoration work, the territorial authority must alter the boundaries of the designation accordingly and impose the conditions set out in *Schedule 2* on the designation (and the provisions of Part 8 of the RMA concerning requests for further information, notification, submissions, and hearings in relation to the notice of requirement are substituted with a more limited consultation process).

The ability to take enforcement proceedings in relation to the activities undertaken in reliance on *Part 2* is limited to a consent authority or a Minister (*clause 18*).

### **Relevant Minister's reasons**

The relevant Minister considers that these modifications to the RMA are necessary or desirable for the purposes of the Act, and the extent of this aspect of the order is no broader than is reasonably necessary, to facilitate the reopening of the coastal route as soon as practicable.

In relation to *clauses 5 and 6*,—

- it will not be possible for the agencies to secure all necessary resource consents in the required time frames if the status of restoration work remains as that set under the applicable plans and national environmental standards. To require agencies to secure resource consents for restoration work using the normal RMA processes would significantly delay their ability to start the work, and

would involve an unacceptable risk that some consent applications may be declined or otherwise appealed (with resulting delays):

- the range of activities described in *clause 5(2)* that are deemed to be controlled activities needs to be broad, given the varied array of works that are necessary to restore the coastal route and the complex consenting framework for such works if the normal RMA processes were to apply:
- it is necessary to deem all activities for which resource consents will be required to be controlled activities to require the local authorities to grant consent:
- it is necessary to specify matters of control in the order (*clause 6(4)*) because any matters of control in the relevant RMA planning documents will not be applicable to the deemed controlled activities. The matters of control in *clause 6(4)* have been developed to include all key potential environmental effects of the restoration work.

In relation to *clause 7*, it is necessary to exempt agencies from meeting the application requirements in section 88(2) and Schedule 4 of the RMA because it will not be possible for the agencies to prepare an application that complies with section 88(2) and ensure that restoration work can start without undue delay due to the scale of the restoration work required.

In relation to *clause 8*,—

- it is necessary to modify the public and limited notification processes because it will not be possible for the agencies to secure all necessary resource consents in the required time frames if the usual notification process under the RMA applies. In particular, the time frames associated with the submission process (including decisions on notification, and the time frame for public submissions and hearings) would prevent consents from being obtained in the required time frame. Further, any appeals from submitters would effectively prevent the restoration work from occurring in the necessary time frames:
- given the order alters the activity status of a number of activities to controlled, there are likely to be a number of areas where the consents sought would not align with the provisions of the relevant RMA planning documents. Therefore, it is necessary to exempt consent authorities from the requirement to have regard to the various RMA planning documents referred to in section 104(1)(b) of the RMA. Removing the requirement for consent authorities to have regard to those planning documents would avoid any potential conflict between those planning documents and the requirement to grant consent subject only to conditions relating to the matters specified in *clause 6(4)*:
- it is necessary to deem compliance with section 107(2) of the RMA, because although restoration work should qualify as “exceptional circumstances” in terms of section 107(2)(a) of the RMA, section 107 otherwise imposes a jurisdictional barrier to the grant of consent. Failing to deem compliance with sec-

tion 107(2) would lead to an unacceptable consenting risk, given the urgent need to restore the coastal route.

To address the limits on public participation following on from the suspension of public and limited notification, *clauses 9 and 10* introduce an alternate consultation process, drawing from the process in sections 19 and 20 of the Hurunui/Kaikōura Earthquakes Emergency Relief Act 2016. The time frames in *clauses 9 and 10* are necessarily short, in order to ensure that there is no undue delay to the commencement of restoration work.

In relation to *clause 11*,—

- given the pressing need to commence restoration work to ensure that social and economic recovery starts to occur as soon as possible, the agencies require a method of obtaining consents as soon as is feasibly practicable:
- because of the heavy resource pressure that the consent authorities will face to consider and grant consents under the expedited processes in *Part 2* of this order, it will be difficult for consent authorities to develop comprehensive RMA conditions to apply to the restoration work while at the same time ensuring that the conditions are capable of being complied with and will not unduly hinder the necessary restoration work:
- to address that difficulty, a set of comprehensive conditions has been developed. These conditions are set out in *Schedule 1*. The conditions have been developed so that they are suitable to be imposed without further consideration by the consent authorities. The conditions appropriately address all key potential environmental effects of the restoration work, in a way that will not unduly or inappropriately hinder the work:
- it is necessary for the agencies to retain approval rights over any changes to the conditions in *Schedule 1* given that the agencies will have the most up-to-date knowledge of the practical conditions and logistical and resource constraints associated with restoring the coastal route:
- it is necessary to give the agencies the ability to specify alternative amendments to the conditions in *Schedule 1* to those recommended by the consent authority, to ensure that the agencies can accept recommendations in part and make consequential changes. The requirement that any alternative amendments cannot be less onerous than the conditions in *Schedule 1* provides an environmental safeguard.

In relation to *clause 12*,—

- the obligations in *clause 12* will apply only in the period before the agencies obtain consents for coastal restoration work, because after obtaining appropriate consents it is not necessary to rely on section 330 of the RMA. The additional obligations on the agencies in *clause 12(2)(a) and (b)* are intended to ensure that emergency works for the purpose of coastal restoration are conducted in a way that is sensitive to the receiving environment in the period before conditions of consent apply:

- it is necessary that the obligations in *clause 12(2)(a) and (b)(i)* not apply for the first 10 working days after this order comes into force, as the agencies will need some lead-in time before complying with those obligations.

The amendments in *clause 13* are necessary to allow the agencies to apply for consents to carry out works on land that will be reclaimed as part of the restoration work, prior to preparing a legal survey of that land and submitting it under section 245 of the RMA. The preparation and submission of a survey could cause delay. It would seriously hold recovery work up if the agencies could not obtain resource consents on, or alter designations to cover, new land that is to be reclaimed from the coastal marine area.

In relation to *clause 14*,—

- the deemed permitted activity statuses are necessary because of the scale of the resources required for the restoration work, which far exceed the current capacity of the Kaikōura area in particular:
- it is necessary to extend permitted activity status for temporary depots and storage facilities incidental to works by the agencies beyond the restoration of the coastal route because—
  - in practice, it will be very difficult (and inefficient) for the agencies to restrict the use of temporary depots and storage facilities solely to repair works related to the coastal route. The agencies will also need to use these temporary facilities to enable other road and rail repair works in the districts; and
  - during the period until the coastal route is reopened, it is vital that alternative transport routes affected by the earthquakes are appropriately repaired and operating:
- it is necessary to provide permitted activity status for parking areas to allow the temporary parking of any heavy vehicles (including those not directly under the control of the agencies, such as milk tankers) where those vehicles are held up as a result of disruption to the land transport system because of the earthquakes.

In relation to *clause 15*, it is necessary to deem the excavation and filling of the Waitohi Domain for the purpose of establishing a parking area a controlled activity to address a particular issue that has arisen in Picton as a result of changes to coastal shipping due to the earthquakes. Large trucks are now required to wait for longer periods in the Picton area and there is insufficient space for them to park safely. In the interests of community and transport infrastructure safety, a suitable parking area is urgently required. This clause enables the works required to establish the parking area in the Waitohi Domain to be consented as a controlled activity so that the parking area can be in place before the busiest periods of the year.

In relation to *clause 16*, it is necessary to waive the requirement in 176A of the RMA for the requiring authority to submit an outline plan of a public work or project to a

territorial authority for any restoration work. Again, this is necessary to ensure that the restoration work can commence without undue delay.

In relation to *clause 17*,—

- the normal process for altering designations for the coastal route is modified to avoid unacceptable delays to the restoration work:
- the conditions that apply to alterations set out in *Schedule 2* have been developed to ensure that all key potential environmental effects are addressed, and this serves to ensure the modifications to the normal designation process are no broader than is reasonably necessary:
- the alternative consultation process in *clause 17(3) and (4)* will allow for input by affected stakeholders.

Under *clause 18*, enforcement proceedings under Part 12 of the RMA may be taken only by a consent authority or a Minister. It is necessary to exclude applications for enforcement orders or declarations by members of the public to ensure that restoration work can proceed. The ability for consent authorities and Ministers to bring proceedings is sufficient to ensure that conditions of consent and designation and other relevant sections of the RMA are not breached.

### **Consideration of effects on environment**

Section 8(1)(e) of the Act requires the relevant Minister, if the order relates to the RMA, to consider the effects on the environment of any controls provided for in the order, and whether those controls avoid, remedy, or mitigate any adverse effects. In this regard, the works to be undertaken under the order will have an impact on the environment, however,—

- in relation to *Part 2* generally, the order sets up processes for resource consents and alterations to designations. Each process has in-built environmental checks and balances, including—
  - any resource consent application must include a high-level consideration of the potential effects:
  - for resource consents that are granted pre-April 2017 and alterations to designations, the order is designed to have resource consent conditions that will avoid, remedy, or mitigate any adverse effects:
  - any resource consent application post-April 2017 will enable the consent authority to impose resource consent conditions for the purposes of avoiding, remedying, or mitigating any adverse effects:
- in relation to applications under *clause 11*, the consent conditions listed in *Schedule 1* are intended to avoid, remedy, or mitigate adverse effects of the restoration work. All consents under this process will have conditions requiring a Construction Environmental Management Plan, the involvement of a restoration liaison group (with representation from the consent authority, relevant local authorities, Heritage New Zealand Pouhere Taonga, the Department of Conservation, relevant mana whenua, and the Kaikōura Marine Guardians) to



help inform the design, management, and monitoring of all construction work, and the involvement of an Iwi Adviser to advise on cultural effects. These consent conditions reflect consent conditions for similar infrastructure works:

- in relation to applications under *clauses 6 to 10*, the process will enable councils to put resource consent conditions on consents, at their discretion, in accordance with the matters of control specified in *clause 6(4)*. This list includes all of the key environmental considerations appropriate to infrastructure activities in this environment. Environmental effects will be mitigated through these conditions. This process will enable specified parties to make comments and therefore will enable more informed consideration of the range of environmental effects in decisions:
- in relation to emergency works (*clause 12*), given the large extent of emergency works that will be undertaken, this clause adds additional controls to consider, avoid, remedy, or mitigate, and monitor the environmental effects as far as practicable. These controls add an additional layer of environmental protection, over and above what is currently provided in the emergency works provisions (sections 330 and 330B) of the RMA:
- in relation to deeming temporary depots and storage facilities to be permitted activities (*clause 14*), the order enables the relevant territorial authority to put requirements on noise control, and to avoid, remedy, and mitigate other environmental effects:
- in relation to deeming the excavation and filling of the Waitohi Domain to be a controlled activity (*clause 15*), the order requires that the conditions set out in *clause 9 of Schedule 1* be imposed on a resource consent for excavating and filling the Waitohi Domain to establish a parking area:
- in relation to designations (*clauses 16 and 17*), the conditions for the designations include that before starting construction works a restoration liaison group (with representation from the requiring authority, relevant local authorities, Heritage New Zealand Pouhere Taonga, the Department of Conservation, relevant mana whenua, and the Kaikōura Marine Guardians) be established to help inform the design, management, and monitoring of all construction works. They also require that an ecological scoping survey be undertaken and the development of measures to minimise adverse effects. The specified conditions reflect similar infrastructure construction designation conditions.

#### *Modifications to Conservation Act 1987*

*Clause 19* provides that if an agency applies under section 17R(1) of the Conservation Act 1987 for a concession to carry out restoration work in a conservation area (or under section 59A of the Reserves Act 1977 for a concession to carry out restoration work in a reserve vested in the Crown) the Minister of Conservation must grant the concession within 5 working days after the date of the application, and impose the conditions set out in *Schedule 3* (which, among other things, requires the agency to develop ecological principles to guide works and environmental outcomes).

### Relevant Minister's reasons

The relevant Minister considers this aspect of the order is necessary or desirable for the purpose of the Act, and is no broader than is reasonably necessary, because—

- it is impracticable for restoration work to completely avoid works (particularly the unavoidable need to stabilise slopes above the coastal route) within conservation areas because of the position of the coastal route and the highly constrained nature of the surrounding environment:
- applying through the usual Conservation Act 1987 processes and time frames would unduly delay, and possibly prevent, restoration work:
- the conditions in *Schedule 3* have been developed to appropriately avoid, remedy, or mitigate any adverse effects on conservation areas and are consistent with the resource consent and designation conditions set out in *Schedules 1 and 2*.

#### *Modifications to Freshwater Fisheries Regulations 1983*

*Clauses 20 and 21* modify the provisions of the Freshwater Fisheries Regulations 1983 by providing that—

- regulation 21, which prohibits interfering with or damaging, or taking any sports fish in or from any water that is within 100 metres of, any net, trap, or other contrivance erected or placed for the purposes referred to in that regulation, does not apply to any restoration work carried out by an agency:
- regulations 42, 43, and 44 are modified by providing that if an agency applies for an approval or dispensation for the purpose of carrying out restoration work, the Minister of Conservation must grant the authority within 5 working days after the date of the application and impose the conditions set out in *Schedule 4* (which, among other things, requires the agency to provide for fish passage in culvert design unless it is deemed unnecessary by a suitably qualified ecologist):
- regulation 45 does not apply to the restoration work as it may not be possible to maintain a sufficient flow of water through or past a fish facility to allow the facility to function as specified at all times or periods specified:
- regulation 48 does not apply to the restoration work because it may be necessary to make a structural alteration in a fish facility in the course of carrying out restoration work.

### Relevant Minister's reasons

The relevant Minister considers this aspect of the order is necessary or desirable for the purpose of the Act, and is no broader than is reasonably necessary, because—

- it is not practicable for restoration work (particularly the unavoidable need to stabilise slopes above the coastal route) to completely avoid freshwater fisheries because of the position of the coastal route and the highly constrained nature of the surrounding environment:

- applying through the usual Freshwater Fisheries Regulations 1983 process and time frames would unduly delay, and possibly prevent, restoration work:
- the conditions attached in *Schedule 3* have been developed to appropriately avoid, remedy, or mitigate any adverse effects on fish passage.

#### *Modifications to Marine Mammals Protection Act 1978*

*Clause 22* modifies the provisions of the Marine Mammals Protection Act 1978 by providing that if an agency applies under section 5(1) of that Act for a permit to hold or take a marine mammal in the course of restoration work, the Minister of Conservation must grant the permit within 5 working days after the date of the application and impose the conditions set out in *Schedule 3* (which, among other things, requires the agency to develop ecological principles to guide works and environmental outcomes).

#### **Relevant Minister's reasons**

The relevant Minister considers this aspect of the order is necessary or desirable for the purpose of the Act, and is no broader than is reasonably necessary, because—

- it is not practicable for restoration work to completely avoid interactions with marine mammals, especially fur seals, because of the position of the coastal route and the highly constrained nature of the surrounding environment. In particular, the agencies need sufficient authority to ensure that any fur seals in a works area can be relocated to a safe location:
- applying through the usual Marine Mammals Protection Act 1978 process and time frames would unduly delay, and possibly prevent, restoration work:
- the conditions attached in *Schedule 3* have been developed to appropriately avoid, remedy, or mitigate any adverse effects on marine mammals and are consistent with the resource consent and designation conditions set out in *Schedules 1 and 2*.

#### *Modifications to Marine Reserves Act 1971*

*Clause 23* modifies the provisions of the Marine Reserves Act 1971 by providing that if an agency requests under section 4(3) of that Act to for the purpose of carrying out restoration work, the Minister of Conservation and the Minister in charge of the agency in control of any restoration work must provide the consent within 5 working days after the date of the request and impose the conditions set out in *Schedule 3* (which, among other things, requires the agency to develop ecological principles to guide works and environmental outcomes).

#### **Relevant Minister's reasons**

The relevant Minister considers this aspect of the order is necessary or desirable for the purpose of the Act, and is no broader than is reasonably necessary, because—

- it is not practicable for the restoration work to completely avoid works in or affecting the Hikurangi Marine Reserve because of the position of the coastal route and the highly constrained nature of the surrounding environment:

- applying through the usual Marine Reserves Act 1971 processes would unduly delay, and possibly prevent, restoration work:
- the conditions attached in *Schedule 3* have been developed to appropriately avoid, remedy, or mitigate any adverse effects on the marine reserve and are consistent with the resource consent and designation conditions set out in *Schedules 1 and 2*.

*Modifications to Ōhau New Zealand Fur Seal Sanctuary (Restrictions) Notice 2014*

*Clause 24* modifies the provisions of the Ōhau New Zealand Fur Seal Sanctuary (Restrictions) Notice 2014, by providing that if an agency requests an authority under clause 3(h) of that notice to enter the Ōhau New Zealand Fur Seal Sanctuary for the purpose of restoration work, the Director-General of Conservation must provide the authorisation within 5 working days after the date of the request and impose the conditions set out in *Schedule 3* (which, among other things, requires the agency to develop ecological principles to guide works and environmental outcomes).

**Relevant Minister’s reasons**

The relevant Minister considers this aspect of the order is necessary or desirable for the purpose of the Act, and is no broader than is reasonably necessary, because—

- it is not practicable for the restoration work to completely avoid entering the Ōhau New Zealand Fur Seal Sanctuary because of the position of the coastal route and the highly constrained nature of the surrounding environment:
- applying through the usual processes would unduly delay, and possibly prevent, restoration work:
- the conditions attached in *Schedule 3* have been developed to appropriately avoid, remedy, or mitigate any adverse effects on fur seals and are consistent with the resource consent and designation conditions set out in *Schedules 1 and 2*.

*Modifications to Wildlife Act 1953*

*Clause 25* provides that if an agency applies under section 14AA(1) of the Wildlife Act 1953 for a concession to carry out restoration work in a wildlife sanctuary, wildlife refuge, or wildlife management reserve, the Minister of Conservation must grant the concession within 5 working days after the date of the application and impose the conditions set out in *Schedule 3* (which, among other things, requires the agency to develop ecological principles to guide works and environmental outcomes).

*Clause 26* modifies the Wildlife Act 1953 by providing that if an agency applies for authority under section 53 of that Act to take or kill any wildlife in the course of restoration work, the Director-General of Conservation must issue the authority within 5 working days after the date of the application and impose the conditions set out in *Schedule 3* (which, among other things, requires the agency to develop ecological principles to guide works and environmental outcomes).

**Relevant Minister's reasons**

The relevant Minister considers this aspect of the order is necessary or desirable for the purpose of the Act, and is no broader than is reasonably necessary, because—

- it is not practicable for the restoration work to completely avoid impacts on wildlife protected under the Wildlife Act 1953 because of the position of the coastal route and the highly constrained nature of the surrounding environment:
- applying through the usual Wildlife Act 1953 processes and time frames would unduly delay, and possibly prevent, restoration work:
- the conditions attached in *Schedule 3* have been developed to appropriately avoid, remedy, or mitigate any adverse effects on protected wildlife and are consistent with the resource consent and designation conditions set out in *Schedules 1 and 2*.

*Modifications to Reserves Act 1977*

The order authorises the agencies to exercise powers in relation to reserves for certain purposes that the agencies would otherwise be prohibited from exercising or prohibited from exercising without satisfying certain preconditions, for example, consulting the public or hearing objections.

A reserve for the purposes of the order is defined in *clause 28* and means any land (or part of any land) within the district of any of the local authorities specified in *clause 3(1)*—

- that is a reserve or a public reserve (as those terms are defined in section 2(1) of the Reserves Act 1977) that is owned, administered, managed, or controlled by the local authority; or
- that is any other land owned, administered, managed, controlled, or held by a local authority under any enactment (other than the Reserves Act 1977) as a reserve or park, or for community purposes.

*Clause 29* sets out the actions that an agency may take in relation to a reserve. The actions are—

- undertaking restoration work anywhere in a reserve:
- operating a parking area for heavy motor vehicles anywhere in a reserve:
- prohibiting persons from entering or remaining on a reserve.

*Clause 30* empowers an agency to act under *clause 29* in relation to a reserve despite the management plan for the reserve, the Reserves Act 1977, or any other enactment under which the reserve is held or that applies to the reserve. However, an agency, in doing so,—

- must take all reasonable steps in the circumstances to protect the integrity of the reserve; and

- where undertaking restoration work, or, if the reserve is adversely affected by the council's actions, must reinstate the reserve as closely as practicable to its prior condition.

However, these restrictions do not apply to the extent that it is necessary for the agency to occupy any part of the reserve in order to undertake any restoration work that is necessary for permanent infrastructure associated with the coastal route.

#### **Relevant Minister's reasons**

The relevant Minister considers this aspect of the order is necessary or desirable for the purpose of the Act, and is no broader than is reasonably necessary, because—

- it is not practicable for the restoration work to completely avoid works in reserves (particularly the need to stabilise slopes above the coastal route) because of the position of the coastal route and the highly constrained nature of the surrounding environment:
- applying through the usual processes and time frames under the Reserves Act 1977 would unduly delay, and possibly prevent, restoration work:
- the requirements to take all reasonable steps to protect the integrity of the reserve, and to reinstate the reserve as closely as practicable to its prior condition, will ensure that adverse effects on the environment are appropriately avoided, remedied, or mitigated.

#### *Modifications to Heritage New Zealand Pouhere Taonga Act 2014*

*Clause 31* enables an agency to apply for an emergency authority under subpart 3 of Part 3 of the Heritage New Zealand Pouhere Taonga Act 2014 for restoration work. Under section 61 of that Act, an application can be made for emergency authority to undertake an activity that will or may modify or destroy an archaeological site or sites in an area or district over which a state of emergency is declared, or a transition period is notified, under the Civil Defence Emergency Management Act 2002. *Clause 31* modifies subpart 3 of Part 3 to enable an application to be made for restoration work, as follows:

- the emergency provisions of the Heritage New Zealand Pouhere Taonga Act 2014 can be used even if no state of emergency or transition period is in place under the Civil Defence Emergency Management Act 2002:
- Heritage New Zealand Pouhere Taonga must grant the emergency authority, with or without conditions:
- Heritage New Zealand Pouhere Taonga must give notice of the grant of the emergency authority to the persons and bodies specified in section 62(6) of the Heritage New Zealand Pouhere Taonga Act 2014 (the owner of the relevant land, the local authorities that have jurisdiction in the relevant area, the appropriate iwi or hapū, and the chief executive of the Ministry for Culture and Heritage):

- there is a reduced time frame for the right of appeal to the Environment Court (from 14 days to 5 working days) against the grant of the emergency authority.

### **Relevant Minister's reasons**

The relevant Minister considers this aspect of the order is necessary or desirable for the purpose of the Act, and is no broader than is reasonably necessary, because—

- it is not practicable for the restoration work to completely avoid works that will or may modify or destroy an archeological site (particularly the work to stabilise slopes above the coastal route) because of the position of the coastal route and the highly constrained nature of the surrounding environment:
- applying through the usual (non-emergency) provisions of the Heritage New Zealand Pouhere Taonga Act 2014 would unduly delay, and possibly preclude, restoration work:
- it is necessary to specify that the emergency provisions of the Heritage New Zealand Pouhere Taonga Act 2014 can be used even if no state of emergency or transition period is in place, because—
  - certain vital restoration work is required in the Marlborough region, where no state of emergency has been declared; and
  - the agencies require certainty that the emergency process can be used even if the transition period in the Canterbury Region is not extended:
- if an application for an archaeological authority is declined, it may prevent restoration work:
- any appeals against the grant of an emergency authority would unduly delay, and possibly prevent, restoration work. In order to minimise any delay, the time period for lodging an appeal has been shortened to 5 working days.

### *Modifications to Public Works Act 1981*

*Clauses 32 to 38* modify the operation of section 18 and sections 23 to 26 of the Public Works Act 1981 (the **Act**), where the Minister for Land Information considers it reasonably necessary to take land for the purpose of restoration work. (The Act refers to the Minister of Lands, however that ministerial portfolio no longer exists and it is the Minister for Land Information who administers the Act.)

*Clause 33* provides that section 18 of the Act (which relates to a requirement for prior negotiations for acquisition of land for essential works) does not apply in relation to the compulsory acquisition of land for the purpose of restoration work. *Clauses 34 to 37* exclude the rights of objection to the Environment Court under the Act and instead apply an alternative process for the acquisition of land (with no requirement for negotiation prior to compulsory acquisition). *Clause 38* provides that any acquired land must be treated as having been acquired for a Government work for the purposes of the Act.

The provisions of the Act relating to compensation remain unchanged.

### **Relevant Minister's reasons**

The relevant Minister considers this aspect of the order is necessary or desirable for the purpose of the Act, and is no broader than is reasonably necessary, because—

- the time required to negotiate and to resolve objections to notices to take land under the Act would unreasonably delay the restoration work:
- the powers granted can be used only if the Minister considers it reasonably necessary to take land for an agency to undertake restoration work.

### **Regulatory impact statement**

The Ministry of Transport produced a regulatory impact statement on 7 December 2016 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at <http://www.treasury.govt.nz/publications/informationreleases/ris>.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 22 December 2016.

This order is administered by the Ministry of Transport.