



## **Severe Weather Emergency Recovery (KiwiRail Holdings Limited) Order 2023**

Rt Hon Dame Helen Winkelmann, Administrator of the Government

### **Order in Council**

At Wellington this 2nd day of October 2023

Present:

Her Excellency the Administrator of the Government in Council

This order is made under section 7 of the Severe Weather Emergency Recovery Legislation Act 2023—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the joint recommendation of the Minister of Transport, the Minister of Finance, the Minister for Land Information, the Minister of Conservation, and the Minister for the Environment made in accordance with section 8(1) and (2) of that Act.

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## Order

### 1 Title

This order is the Severe Weather Emergency Recovery (KiwiRail Holdings Limited) Order 2023.

### 2 Commencement

This order comes into force on 6 October 2023.

### 3 Revocation of this order

This order is revoked on the close of 31 March 2028.

### 4 Interpretation

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

**Act** means the Severe Weather Emergency Recovery Legislation Act 2023  
**affected rail route**—

- (a) means a section of railway land affected by a severe weather event and specified in Schedule 1; and
- (b) includes all land, infrastructure, and other property adjacent to or associated with each section of railway land referred to in paragraph (a)

**Agency** means KiwiRail Holdings Limited

**at-risk or threatened species** means any organism (including a plant, an animal, or a fungi) categorised by the New Zealand Threat Classification System administered by the Department of Conservation as at risk or threatened

**CMA** means the coastal marine area (as defined in section 2(1) of the RMA)

**Crown reserve** means land that is, or is part of, a reserve or a public reserve (as those terms are defined in section 2(1) of the Reserves Act 1977) that is vested in the Crown

**culturally significant land** has the meaning given in section 331B(7) of the RMA

**local authority reserve** means land that is, or is part of, 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, or vested in, a local authority

**Māori entity** has the meaning given by section 9 of the Urban Development Act 2020

**naturally uncommon ecosystem** means any of the ecosystem types described in Table 2 in “New Zealand’s historically rare terrestrial ecosystems set in a physical and physiognomic framework” by P A Williams, S K Wiser, B Clarkson, and M C Stanley *New Zealand Journal of Ecology* (2007) 31(2): 119–128 published online at <https://newzealandecology.org/nzje/2829>

**NZTM** means the New Zealand Transverse Mercator 2000 projection

**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 general policy, conservation management strategy, or conservation management plan made under any of the following:

- (a) the Conservation Act 1987;
- (b) the Reserves Act 1977;
- (c) the Wildlife Act 1953

**protected wildlife**,—

- (a) in relation to Part 6 and Schedule 4 of this order, has the meaning set out in section 3 of the Wildlife Act 1953;
- (b) in other provisions of this order, has the meaning given in section 2(1) of the Conservation Act 1987

**railway land** means all land held by the Crown for railway purposes (including land held by the Crown acting by or through New Zealand Railways Corporation)

**recovery work**—

- (a) means any activity that, because of or in connection with a severe weather event, it is necessary or desirable to undertake, without undue delay, to restore the function of an affected rail route and enable it to be used fully, effectively, and safely; and
- (b) includes any activity necessary or desirable to—
  - (i) repair or rebuild an affected rail route in the same or a similar location; and

- (ii) enhance the safety and improve the resilience of an affected rail route

**RMA** means the Resource Management Act 1991

**significant wildlife** includes—

- (a) at-risk or threatened species:
- (b) protected wildlife:
- (c) taonga species

**taonga species**, in relation to recovery work,—

- (a) means a species identified as a taonga by an iwi or a hapū holding mana whenua for the area in which the recovery work is being, or is intended to be, undertaken; and
- (b) includes any species identified by whānau through engagement by the Agency with iwi or hapū

**working day** has the meaning given in section 2(1) of the RMA.

- (2) In this order, **protected Māori land** means any of the following:

- (a) Maori customary land:
- (b) land vested in the Māori Trustee that—
  - (i) is constituted as a Maori reserve by or under the Maori Reserved Land Act 1955; and
  - (ii) remains subject to that Act:
- (c) land set apart as a Maori reservation under Part 17 of Te Ture Whenua Maori Act 1993:
- (d) any part of the common marine and coastal area in which customary marine title has, or protected customary rights have, been recognised under the Marine and Coastal Area (Takutai Moana) Act 2011:
- (e) land that forms part of a natural feature that has been declared under an Act to be a legal entity or person (including Te Urewera land within the meaning of section 7 of the Te Urewera Act 2014):
- (f) the maunga listed in section 10 of the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014:
- (g) Maori freehold land:
- (h) General land owned by Maori that was previously Maori freehold land, but ceased to have that status in accordance with—
  - (i) an order of the Māori Land Court made on or after 1 July 1993; or
  - (ii) Part 1 of the Maori Affairs Amendment Act 1967:
- (i) land held by a post-settlement governance entity if the land was acquired—
  - (i) as redress for the settlement of Treaty of Waitangi claims; or

- (ii) by the exercise of rights under a Treaty settlement Act or Treaty settlement deed:
  - (j) land held by or on behalf of an iwi or a hapū if the land was transferred from the Crown, a Crown body, or a local authority with the intention of returning the land to the holders of mana whenua over that land.
- (3) In subclause (2),—

**claimant group** means a group of Māori with Treaty of Waitangi claims against the Crown, whether or not those claims have been lodged with, or heard by, the Waitangi Tribunal under the Treaty of Waitangi Act 1975

**common marine and coastal area** has the same meaning as in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011

**Crown body** means—

- (a) a Crown entity, as defined in section 7(1) of the Crown Entities Act 2004; and
- (b) a State enterprise, as defined in section 2 of the State-Owned Enterprises Act 1986; and
- (c) the New Zealand Railways Corporation; and
- (d) a company or body that is wholly owned or controlled by 1 or more of the following:
  - (i) the Crown;
  - (ii) a Crown entity;
  - (iii) a State enterprise;
  - (iv) the New Zealand Railways Corporation; and
- (e) a subsidiary (as defined in section 5 of the Companies Act 1993) or related company of a company or body referred to in paragraph (d)

**deed of recognition** means the redress of that name included in certain Treaty settlement Acts

**General land owned by Maori** has the same meaning as in section 4 of Te Ture Whenua Maori Act 1993

**land held by a post-settlement governance entity** includes land that is, in accordance with a Treaty settlement Act, held in the name of a person such as a tipuna of the claimant group (rather than the entity itself)

**local authority** has the same meaning as in section 5(1) of the Local Government Act 2002

**mana whenua** has the same meaning as in section 2(1) of the Resource Management Act 1991

**Maori** has the same meaning as in section 4 of the Te Ture Whenua Maori Act 1993

**Maori customary land** has the same meaning as in section 4 of Te Ture Whenua Maori Act 1993

**Maori freehold land** has the same meaning as in section 4 of Te Ture Whenua Maori Act 1993

**Māori Trustee** means the Māori Trustee established under the Māori Trustee Act 1953

**post-settlement governance entity**—

- (a) means a body corporate or the trustees of a trust established, for the purpose of receiving redress in the settlement of the Treaty of Waitangi claims of a claimant group,—
  - (i) by that group; or
  - (ii) by or under an enactment or order of a court; and
- (b) includes—
  - (i) an entity established to represent a collective or combination of claimant groups; and
  - (ii) an entity controlled by an entity referred to in paragraph (a); and
  - (iii) an entity controlled by a hapū to which redress has been transferred by an entity referred to in paragraph (a)

**protected customary right** has the same meaning as in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011

**redress** means redress provided for, by, or under a Treaty settlement Act or Treaty settlement deed, including redress by or under—

- (a) a statutory acknowledgement and the associated statement of association;
- (b) a deed of recognition

**statutory acknowledgement** means redress of that name included in certain Treaty settlement Acts

**Treaty of Waitangi claim** means a claim within the meaning of section 6 of the Treaty of Waitangi Act 1975, whether or not that claim was submitted to the Waitangi Tribunal.

- (4) A term used in Part 1 of this order that is defined in the RMA, but not in this order, has the meaning given in that Act.
- (5) A term used in Part 2 of this order that is defined in the Public Works Act 1981, but not in this order, has the meaning given in that Act.
- (6) A term used in Part 3 of this order that is defined in the Conservation Act 1987 or the Reserves Act 1977, but not in this order, has the meaning given in whichever of those Acts defines the term.
- (7) A term used in Part 4 of this order that is defined in the Reserves Act 1977, but not in this order, has the meaning given in that Act.

- (8) A term used in Part 5 of this order that is defined in the Conservation Act 1987 or the Freshwater Fisheries Regulations 1983, but not in this order, has the meaning given in that Act or those regulations.
- (9) A term used in Part 6 of this order that is defined in the Wildlife Act 1953 or the Conservation Act 1987, but not in this order, has the meaning given in that Act.
- (10) The modification of legislation by this order does not affect the text of the legislation, but requires it to be read as if it had been amended in the manner indicated by this order.

## Part 1

### Modifications to Resource Management Act 1991

#### 5 This Part modifies Resource Management Act 1991

- (1) This Part modifies the RMA.
- (2) In this Part, **recovery work** means recovery work (within the meaning of clause 4(1)) that—
  - (a) would require a resource consent under section 9, 12, 13, 14, or 15 of the RMA; and
  - (b) is not a permitted activity under—
    - (i) a plan; or
    - (ii) a national environmental standard.

#### 6 Classification of recovery work

- (1) This clause modifies sections 87A(2) to (5) and 104A(b) of the RMA.
- (2) Recovery work done by or on behalf of the Agency is a controlled activity for the purposes of section 87A(2) of the RMA.
- (3) For the purposes of sections 87A(2)(b) and 104A(b) of the RMA, a resource consent granted by a consent authority for recovery work must be on the conditions set out in Schedules 2 and 3 that relate to the recovery work, as modified by the following:
  - (a) any amendments to the conditions in Schedules 2 and 3 recommended by the consent authority under clause 10(1) that are accepted by the Agency and notified to the authority under clause 10(3) and (4)(a); and
  - (b) any additional conditions recommended by the consent authority under clause 10(1) (within the scope of the authority's power specified in sub-clause (4)) that are accepted by the Agency and notified to the authority under clause 10(3) and (4)(a); and
  - (c) if the Agency rejects any recommended amendments to the conditions in Schedule 2 or 3 or any additional conditions recommended by the con-

- sent authority, any alternative amendments that will apply as identified by the Agency and notified to the authority under clause 10(4)(b).
- (4) The consent authority's power to recommend conditions additional to those set out in Schedules 2 and 3 is restricted to the following matters:
- (a) the management of the effects of the recovery work on the following:
    - (i) cultural values and culturally significant land:
    - (ii) areas of significant indigenous vegetation and significant habitats of indigenous fauna:
    - (iii) freshwater quality:
    - (iv) heritage and archaeological values:
    - (v) landscape, natural character, and visual amenity:
    - (vi) coastal processes:
    - (vii) coastal water quality:
    - (viii) marine mammals and seabirds; and
  - (b) the management of construction work, stormwater, marine biosecurity, hazardous substances, spills, artificial lighting, dust, noise, and vibration.
- (5) Section 87A(2)(c) of the RMA does not apply in relation to the recovery work.
- (6) Wherever practicable, significant adverse effects of the recovery work on adjoining landowners must be avoided, remedied, or mitigated.

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

- (1) This clause modifies section 88 of the RMA.
- (2) Instead of complying with section 88(2) of the RMA, an application for a resource consent for recovery work must include—
- (a) a general description of the recovery work intended to be carried out:
  - (b) a general description of the site where the work is to occur, including—
    - (i) a map of the area:
    - (ii) any identified cultural values:
    - (iii) details of any culturally significant land:
  - (c) an assessment (which may be a desktop assessment) of the potential effects of the work with input from appropriate experts, including consideration of—
    - (i) all reasonably available information; and
    - (ii) the potential effects on any cultural values identified by a relevant iwi or hapū; and
    - (iii) the potential effects on any culturally significant land that is within, or adjacent to, the site where the work is to occur:
  - (d) proposals to avoid, remedy, or mitigate those effects:

- (e) any conditions that the Agency proposes for the consent:
  - (f) a description of any consultation undertaken in relation to the work, including with relevant Māori entities.
- (3) Section 88(3) to (5) of the RMA does not apply to an application for resource consent for the recovery work.

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

- (1) This clause and clauses 9 to 11 modify sections 95 to 99A, 104, 104A, 105, 107(2), and 115 of the RMA.
- (2) An application for a resource consent for recovery work—
- (a) must not be publicly notified or given limited notification, but the persons specified in clause 9 must be consulted on the application in accordance with that clause; and
  - (b) must otherwise be determined in accordance with Part 6 of the RMA, except that—
    - (i) the procedure set out in clause 10 concerning changes to conditions in Schedules 2 and 3 applies; and
    - (ii) the consent authority need not have regard to the matters in section 104(1)(b) or 105 of the RMA when considering the application; and
    - (iii) if the resource consent is a discharge permit, the consent authority is deemed to be satisfied of the matters in section 107(2) of the RMA; and
    - (iv) the consent authority must consider comments received as part of the consultation process under clause 9 and make publicly available a summary of the comments, together with the Authority's response to the issues raised, before or at the same time as its decision on the application is notified under the RMA; and
    - (v) for the purposes of section 115 of the RMA, notice of the consent authority's decision must be given within 30 working days after the date on which the application was lodged with the consent authority.
- (3) The time limit specified in subclause (2)(b)(v) 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) Within 5 working days after an application for a resource consent for recovery work is lodged with the consent authority, the consent authority must—
- (a) notify the following persons that an application has been lodged and advise them where they can find a copy of the application:
    - (i) a relevant Māori entity; and

- (ii) each local authority in whose district or region the work is to be undertaken; and
  - (iii) if the work is to be undertaken within the CMA, Maritime New Zealand; and
  - (iv) the Minister for Arts, Culture and Heritage; and
  - (v) the Minister of Conservation; and
  - (vi) the Minister for the Environment; and
  - (vii) any network utility operator that undertakes a network utility operation in, on, or under the land where the work is to be undertaken; and
  - (viii) the owners and occupiers of land whose boundary is contiguous to the land where the work is to be undertaken; and
  - (ix) any requiring authority that holds a designation over the land where the work is to be undertaken; and
  - (x) any applicant for customary marine title of an area of the CMA where the work is to be undertaken; and
  - (xi) any other person as the consent authority considers appropriate, provided that the consent authority is satisfied that the person has an interest in the application for resource consent that is greater than the interest of the general public; and
- (b) invite those persons to make written comments on the application; and
  - (c) specify in the invitation the date by which written comments must be received by the authority (which must be 10 working days from the date of the invitation).
- (2) An invitation under this clause must be treated as a document to be served for the purposes of the RMA, and section 352 of that Act applies accordingly.
  - (3) 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.
  - (4) 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 Procedure concerning consent conditions**

- (1) The consent authority must, within 5 working days after the date on which written comments were due to be received on the application for resource consent under clause 9(1)(c), notify the Agency of any recommended amend-

ments to the Schedule 2 and 3 conditions and any additional recommended conditions.

- (2) In the notification, the consent authority—
  - (a) must set out the recommended amendments to the resource consent conditions and any additional recommended conditions; and
  - (b) may include a statement setting out the consent authority's reasons for the recommendation.
- (3) The Agency must, within 5 working days after the date of the notification, notify the consent authority of the Agency's decision on the recommendation.
- (4) In the Agency's notification, the Agency must—
  - (a) identify any recommended amendments and any additional recommended conditions that the Agency accepts; and
  - (b) identify any recommended amendments that the Agency rejects, together with any alternative amendments that will apply (which must not be less onerous than the conditions in Schedules 2 and 3); and
  - (c) include a statement of the Agency's reasons for rejecting any recommended amendments and any additional recommended conditions.
- (5) The time limits specified in this clause may not be extended or deferred in any way (including under section 37, 88B, 88C, or 88E of the RMA).

#### **11 Consent authority must prepare and publish summary of responses to comments**

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

#### **12 Application for resource consents for recovery work on or before 30 April 2024**

- (1) This clause and clause 13 modify sections 95 to 99A, 104, 104A, 105, 107(2), 108, and 115 of the RMA in relation to an application for a resource consent for recovery work if that application is made on or before 30 April 2024.
- (2) The Agency may proceed with the application—
  - (a) under clauses 8 to 11; or

- (b) under this clause, in which case the application must be determined in accordance with subclauses (3) and (4) and clause 13.
- (3) The application for a resource consent must not be publicly notified or given limited notification.
- (4) A resource consent granted by the consent authority for the recovery work must be on the conditions set out in Schedules 2 and 3 that relate to the work, as modified by—
  - (a) any amendments recommended by the consent authority under clause 13(1) that are accepted by the Agency;
  - (b) if the Agency rejects any amendments recommended by the consent authority, any alternative amendments identified by the Agency.

### **13 What happens if consent authority recommends amendments to conditions**

- (1) The consent authority may, within 3 working days after the date of an application for resource consent in accordance with clause 12, notify the Agency of any amendments that the consent authority recommends to the conditions that relate to the work under Schedules 2 and 3.
- (2) 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.
- (3) 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.
- (4) In the notification, the Agency must—
  - (a) identify any recommended amendments that the Agency accepts; and
  - (b) identify any recommended amendments that the Agency rejects, together with any alternative amendments that will apply (which must not be less onerous than the conditions in Schedules 2 and 3); and
  - (c) include a statement of the Agency's reasons for rejecting any recommended amendment.
- (5) 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.
- (6) 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).

**14 Recovery work that is done as emergency work**

- (1) This clause modifies sections 330 to 330C of the RMA in relation to recovery work undertaken by the Agency under either of those sections.
- (2) An application for a resource consent for recovery work undertaken under any of sections 330 to 330C of the RMA must be made in accordance with clause 7 and determined in accordance with this Part.

**15 Reclaimed land**

- (1) This clause modifies sections 87B(1), 89(3), 116(2), and 245(4)(a) of the RMA in relation to land intended to be reclaimed as recovery work.
- (2) If the Agency applies for a resource consent to reclaim land as part of recovery 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 that land, 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 recovery 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 plan.

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

- (1) This clause modifies section 87A(1) to (5) of the RMA.
- (2) The operation of a temporary depot, storage facility, or parking area situated on a specified location is a permitted activity for the purposes of section 87A(1) of the RMA.
- (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 a public notice given by the territorial authority after the operation of the depot, facility, or parking area has commenced, imposing any further requirements—
    - (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 recovery work or other activity to which a temporary depot, storage facility, or parking area is related ceases before the revocation of this order, the operation of the depot, facility, or parking area is no longer a permitted activity and must also cease.

- (5) In this clause,—

**parking area** means a parking area for vehicles, including heavy motor vehicles (for example, trucks, cranes, and associated equipment) that is necessary or desirable for the recovery work

**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 tradespeople, service providers, or contractors, if the depot or facility is reasonably incidental to—

- (i) any recovery work; or
- (ii) any activity that is necessary or desirable in order to, without undue delay, restore any rail line under the control of the 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.

## 17 Outline plan not required for recovery work

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

## 18 Transfer of rights and responsibilities under designations

- (1) This clause modifies section 180 of the RMA.
- (2) Section 180 applies, subject to subclauses (3) and (4).
- (3) A requiring authority that holds a designation may temporarily transfer its rights and responsibilities in relation to all or part of the designation to the Agency, to enable the Agency to relocate infrastructure, or carry out recovery works in relation to infrastructure, within the area of the designation.
- (4) If rights and responsibilities are transferred to it under subclause (2), the Agency must give the territorial authority notice of the transfer that specifies—
- (a) the geographical area to which the transfer relates; and

- (b) the period for which the rights and responsibilities are transferred.

## **19 Alteration to designation boundaries**

- (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 15 applies) that is given to a territorial authority by the Agency under section 181 of the RMA if—
  - (a) the alteration is reasonably necessary for recovery work; and
  - (b) the notice is expressed as being given under this clause as well as under section 181 of the RMA.
- (3) The Agency must, before giving the notice to the territorial authority, invite comments from—
  - (a) every owner or occupier of the land directly affected by the alteration to the designation; and
  - (b) any Māori entity directly affected by the alteration to the designation.
- (4) If any owner, occupier, or Māori entity does not provide comments within 20 working days after the invitation to comment, the Agency may consider that the owner, occupier, or Māori entity has not provided comments.
- (5) Together with the notice, the Agency must provide a summary of any comments received in response to the invitation under subclause (3) and—
  - (a) for comments that have been addressed, a statement setting out how the comments have been addressed; and
  - (b) for comments that have not been addressed, a statement of 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 3 on that part of the designation that has been altered.

## **20 Amalgamation of consents**

- (1) This clause applies if 1 or more resource consents have been granted to the Agency for the same recovery work.
- (2) The Agency may apply to the relevant consent authority to amalgamate the consents for the recovery work.
- (3) Unless the application proposes a new activity or a change to activities authorised by the existing resource consents for the recovery work,—

- (a) the consent authority must not give public or limited notification of the application; and
  - (b) the consent authority must grant the resource consent.
- (4) The consent authority must, within 3 working days after the date of the application, notify the Agency of any conditions that the consent authority proposes to include in the grant of consent.
  - (5) Any conditions proposed under subclause (4) must not be more onerous than, or address any matters outside of, the conditions of the existing resource consents for the recovery work.
  - (6) The Agency must, within 3 working days after the date of notification under subclause (4), provide comments to the consent authority on the proposed conditions.
  - (7) The consent authority must grant the resource consent on the conditions proposed under subclause (4) as amended in response to any comments received from the Agency under subclause (6).
  - (8) Section 357A of the RMA must be read as giving the Agency a right of objection to the consent authority in respect of conditions imposed under subclause (7), and sections 357C to 358 of the RMA apply with all necessary modifications in relation to an objection.

## Part 2

### Modifications to Public Works Act 1981

#### 21 This Part modifies Public Works Act 1981

- (1) This Part modifies the Public Works Act 1981.
- (2) In this Part, unless the context otherwise requires,—

**land**—

- (a) means land that is outside, but within 500 m of the boundaries of, railway land of an affected rail route specified in Part 2 of Schedule 1; but
- (b) does not include protected Māori land

**Minister** means the Minister for State Owned Enterprises

**protected Māori land** has the meaning given in clause 4(2)

**PWA** means the Public Works Act 1981.

#### 22 This Part applies to acquisition of land for recovery work

This Part applies to the acquisition or taking of land for recovery work that,—

- (a) in the Minister's opinion, it is reasonably necessary for the Crown to acquire compulsorily or take in order for the Agency to undertake recovery work; and

- (b) is a freehold interest, or an interest less than a freehold interest, in land identified in the geographic locations specified in Part 2 of Schedule 1.

### **23 Modifications to section 18 of Public Works Act 1981**

Section 18(1) to (4), (7) (except (7)(b)), and (8) of the PWA (which relates to prior negotiations required for acquisition of land for essential works) applies in relation to the acquisition of land to which this Part applies as if every reference to acquiring the land were a reference to acquiring or taking the land.

### **24 Modifications to sections 23 to 26 of Public Works Act 1981**

Sections 23 to 26 of the Public Works Act 1981 are replaced by clauses 25 to 28 in relation to the acquisition or taking of land to which this Part applies.

### **25 Notice of intention to take land**

- (1) The Minister may notify an intention to acquire or take land compulsorily by—
  - (a) publishing in the *Gazette* a notice of intention to take the land in the name of the Crown, in accordance with the requirements in subclause (2); and
  - (b) publicly notifying it.
- (2) The notice of intention must—
  - (a) specify the land to be taken (including the name and street number of 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 to be taken is required.
- (3) The Minister must—
  - (a) serve a notice of intention to take the land (in the form set out in Schedule 6) on the owner of, and persons with a registered estate or interest in, the land unless it is impracticable to do so; and
  - (b) advise those persons of their right to make submissions to the Minister.
- (4) The Minister must lodge a copy of the *Gazette* notice published under subclause (1) with the Registrar-General of Land, who must register it without fee against the record of title affected.
- (5) The Minister may withdraw any notice under this clause, 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 record of title affected.
- (6) There is no right of objection to the Environment Court to a notice of intention to take land under this clause.
- (7) A notice of intention to take land under this clause ceases to have effect on the revocation of this order unless, before that revocation, a Proclamation taking the specified interest in the land has been published in the *Gazette*.

## **26 Proclamation**

- (1) If the Minister considers, in accordance with clause 22, that land should be taken in the name of the Crown, that land may be taken in accordance with clauses 23 to 25 and this clause.
- (2) If necessary, a cadastral survey dataset accurately showing the position and extent of the land to be taken 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.
- (3) The Minister may recommend that the Governor-General issue a Proclamation taking the land if—
  - (a) the *Gazette* notice relating to the land has been registered in accordance with clause 25(4); and
  - (b) the Minister has had regard to any written submissions received from the persons referred to in clause 25(3).
- (4) The Governor-General may, on the recommendation of the Minister, by Proclamation declare that the land described in the Proclamation is taken 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 that is taken.
- (6) However, a Proclamation is not invalidated by any error, defect, or delay in its publication under this clause.
- (7) Unless otherwise provided in the Proclamation, the land specified in a Proclamation under this clause becomes absolutely vested in fee simple in the Crown on the 14th day after the date on which the Proclamation is published in the *Gazette*.

## **27 Proclamation to be registered**

- (1) The Minister must lodge every Proclamation with the Registrar-General of Land, who must register it without fee against the record of title affected.
- (2) If the land is not subject to the Land Transfer Act 2017, 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 2017.
- (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 2017 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.

**28 Land acquired or taken for public work**

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

**Part 3**

**Modifications to Conservation Act 1987 and Reserves Act 1977**

**29 This Part modifies Conservation Act 1987 and Reserves Act 1977**

This Part modifies the Conservation Act 1987 and the Reserves Act 1977.

**30 Concession for recovery work in conservation area or in reserve vested in Crown and managed by Department of Conservation**

- (1) This clause applies if the Agency applies,—
- (a) under section 17R(1) of the Conservation Act 1987, for a concession for the purpose of carrying out recovery work; or
  - (b) under section 59A of the Reserves Act 1977, for a concession for the purpose of carrying out recovery work in relation to a Crown reserve.
- (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), 17SA to 17SE, 17T(2), 17U to 17Y, and 26ZI to 26ZJA 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 recovery work.
- (4) Section 17S of the Conservation Act 1987 (which specifies the information required to be included in an application for a concession) continues to apply and, in addition to the information specified in that section, the application must include a report in accordance with subclause (5) on the consultation undertaken in relation to the proposed work.
- (5) The report on the consultation must include the following information:
- (a) the names and contact details of Māori entities the Agency engaged with;
  - (b) the names of entity representatives who attended meetings and the dates of those meetings;
  - (c) a summary of discussions and, in particular, any concerns raised about potential adverse effects on taonga species known or predicted to be in the area for which the concession is sought;
  - (d) the Agency's responses to any concerns raised.

- (6) A policy, management strategy, or management plan that would otherwise apply to the conservation area or Crown reserve does not apply in relation to the concession or the recovery work.
- (7) The Minister of Conservation may decline to grant the concession if the Minister considers that—
  - (a) the information provided in accordance with subclauses (4) and (5) in support of the application is insufficient to enable the adverse effects of the recovery work on the proposed concession area to be adequately assessed; or
  - (b) the conditions in Schedule 4 would not be sufficient to avoid—
    - (i) more than minimal adverse effects on any of the following that are known or predicted to be in the area for which the concession is sought:
      - (A) a naturally uncommon ecosystem:
      - (B) at-risk or threatened species, other than a species categorised as at-risk and recovering, relict, or naturally uncommon:
      - (C) a taonga species:
    - (ii) significant adverse effects on protected wildlife.
- (8) If the Minister does not decline to grant the concession under subclause (7),—
  - (a) the Minister may grant it; and
  - (b) the only conditions that the Minister may impose on the concession are the conditions set out in Schedule 4.
- (9) If, 20 working days after the date on which the application was received by the Department of Conservation, the Minister has not granted or declined to grant the concession, the Agency is deemed to have been granted the concession with all the conditions set out in Schedule 4.
- (10) A concession granted under this clause must be treated as if it were also a concession granted under section 17Q of the Conservation Act 1987 or, as the case may be, section 59A of the Reserves Act 1977.

### **31 Transfer or release of live aquatic life**

- (1) This clause modifies section 26ZM(4) and (4A) of the Conservation Act 1987.
- (2) This clause applies if the Agency applies under section 26ZM(3)(b) of the Conservation Act 1987 for an approval to transfer or release live aquatic life for the purpose of carrying out recovery work.
- (3) Section 26ZM(4) and (4A) of the Conservation Act 1987 does not apply in relation to the application or the related recovery work.
- (4) Instead,—

- (a) every application for approval must include the following information, except where the Director-General or Minister of Conservation alters these requirements by making them less onerous, on a case-by-case basis:
    - (i) a description of the proposed activity, including:
      - (A) the reason for the transfer or release; and
      - (B) the legal authority under which the fish or aquatic life will be taken; and
      - (C) a map of the water body identifying the proposed take and release areas, and any barriers to fish passage above, below, or between those areas; and
      - (D) the name of the conservation area, reserve, wildlife area, or covenant or kawenata area where release is proposed, and evidence of agreement of the person or entity with legal authority for that area, if not the Department of Conservation; and
    - (ii) an assessment of the potential effects of the proposed activity, including:
      - (A) known and predicted freshwater ecosystem and fishery values of the water body, and species to be released; and
      - (B) the matters addressed in subclause (7)(b); and
      - (C) any actions that the applicant proposes to take to avoid, remedy, or mitigate any adverse effects of the proposed activity; and
    - (iii) details of any consultation in addition to that required by Schedule 5; and
    - (iv) relevant information relating to the applicant, including any information relevant to the applicant's ability to carry out the proposed activity:
  - (b) the Agency must provide to the Minister of Conservation a report on the consultation undertaken in relation to the proposed recovery work.
- (5) The report must include the following information:
- (a) the names and contact details of Māori entities the Agency engaged with:
  - (b) the names of entity representatives who attended meetings and the dates of those meetings:
  - (c) a summary of discussions and, in particular, any concerns raised about the potential adverse effects on taonga species known or predicted to be in the area in relation to which approval is sought:
  - (d) the Agency's responses to any concerns raised.

- (6) A policy, management strategy, or management plan that would otherwise apply to the transfer or release of live aquatic life does not apply in relation to the Minister's approval under section 26ZM of the Conservation Act 1987 or the recovery work.
- (7) The Minister of Conservation may decline to grant the approval if the Minister considers that—
- (a) the information provided in accordance with subclauses (4) and (5) in support of the application is insufficient to enable the adverse effects of the recovery work on ecosystems and fisheries to be adequately assessed; or
  - (b) the conditions in Schedule 5 would not be sufficient to avoid—
    - (i) more than minimal adverse effects on any of the following that are known or predicted to be in the water body in relation to which approval is sought:
      - (A) a naturally uncommon ecosystem;
      - (B) at-risk or threatened species (other than a species categorised as at-risk and recovering, relict, or naturally uncommon);
      - (C) a taonga species;
    - (ii) significant adverse effects on protected wildlife.
- (8) The only conditions that the Minister may impose on the approval are the conditions set out in Schedule 5.
- (9) If, 20 working days after the date on which the application referred to in subclause (2) was received by the Department of Conservation, the Minister has not granted or declined to grant the approval, the Agency is deemed to have been granted the approval with all the conditions in Schedule 5.

## **Part 4**

### **Further modifications to Reserves Act 1977**

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

This Part modifies the Reserves Act 1977 by setting out new provisions that override that Act to the extent that it is inconsistent with this Part of this order.

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

This Part applies to local authority reserves.

**34 Local authority may authorise Agency to occupy and use local authority reserves**

- (1) The local authority that owns, or is responsible for administering, managing, or controlling, a local authority reserve may authorise the Agency to temporarily occupy and use the reserve to do 1 or more of the following:
  - (a) undertake recovery work;
  - (b) operate a parking area for vehicles, including heavy motor vehicles in the local authority reserve;
  - (c) restrict any person's access to the local authority reserve for health and safety reasons;
  - (d) if access is restricted for health and safety reasons, require any person to leave the local authority reserve.
- (2) An authorisation may be granted—
  - (a) for any period, or periods, that the local authority thinks fit; and
  - (b) subject to any conditions that the local authority thinks fit.
- (3) Subclauses (1) and (2) are subject to subclause (4).
- (4) The local authority must, before granting an authorisation,—
  - (a) be satisfied of the matters specified in subclause (5); and
  - (b) notify the Minister of Conservation of its intention to authorise the Agency to occupy and use the local authority reserve, including the period for which, and any conditions on which, it proposes to grant the authorisation.
- (5) The matters referred to in subclause (4) are—
  - (a) that the proposed temporary occupation and use of the local authority reserve (as opposed to other land) is reasonably necessary for recovery work; and
  - (b) that the authorisation will be subject to any conditions necessary to ensure that, as far as practicable,—
    - (i) during the Agency's occupation and use of it the local authority reserve continues to be managed for any purpose consistent with its classification under the Reserves Act 1977; and
    - (ii) any natural, scenic, historic, cultural, archaeological, biological, geological, scientific, educational, community, or other special features or values of the local authority reserve, and any public entry and access to the local authority reserve, are preserved; and
    - (iii) to the extent that any of the things mentioned in subparagraphs (i) or (ii) are not preserved during the Agency's occupation and use of the local authority reserve, they are restored afterwards.

- (6) The local authority may amend or revoke an authorisation granted under this clause if—
- (a) it is no longer satisfied of the matters specified in subclause (5); or
  - (b) it considers that the Agency has breached, or will breach, 1 or more conditions of the authorisation.
- (7) The requirements in subclause (4) that apply in relation to the granting of the authorisation also apply, with all necessary modifications, in relation to its amendment or revocation.

**35 Actions of Agency authorised despite management plan or Reserves Act 1977**

- (1) The Agency may do any of the things it is authorised to do under clause 34—
- (a) despite anything to the contrary in the management plan for the local authority reserve or the Reserves Act 1977; and
  - (b) without complying with any requirement in the management plan for the local authority reserve or the Reserves Act 1977 (for example, any provision relating to public notification or the hearing of objections).
- (2) However, the Agency must comply with any conditions of the authorisation imposed under clause 34(2)(b).

**36 Powers of Minister of Conservation in relation to local authority reserves vested in Crown**

- (1) The Minister of Conservation may, in relation to a local authority reserve that is vested in the Crown,—
- (a) direct that a local authority must not grant an authorisation, or must revoke an authorisation granted by it, under clause 34; or
  - (b) direct that the Agency not do, or cease doing, 1 or more of the things authorised under clause 34(1).
- (2) The Minister may give a direction under this clause only if the Minister considers that—
- (a) the local authority's grant, or intended grant, of the authorisation (including the period or conditions of the authorisation) is in breach of clause 34(4); or
  - (b) the Agency has breached, or will breach, 1 or more conditions of the authorisation; or
  - (c) the authorisation or the thing authorised by clause 34(1) is incompatible with—
    - (i) the Crown's obligations in relation to the local authority reserve (other than under the Reserves Act 1977), including under te Tiriti o Waitangi /the Treaty of Waitangi; or

- (ii) species management requirements under the Wildlife Act 1953, the Marine Mammals Protection Act 1978, or the Conservation Act 1987.
- (3) A local authority or the Agency must comply with a direction given under this clause.

## Part 5

### Modifications to Freshwater Fisheries Regulations 1983

#### 37 This Part modifies Freshwater Fisheries Regulations 1983

This Part modifies the Freshwater Fisheries Regulations 1983 (the **regulations**).

#### 38 Exemption from restriction on taking fish from or near fish traps

Regulation 21 of the regulations does not apply to the Agency if it is carrying out recovery work.

#### 39 Approval, exemption, or dispensation in relation to fish passage

- (1) This clause applies if the Agency applies, under regulation 42(1) or (2), 43(2), or 44(1) of the regulations, for an approval, an exemption, or a dispensation for the purpose of carrying out recovery work.
- (2) Regulations 43 and 44 of the regulations are modified as set out in this clause.
- (3) Regulations 43(3), 44(2) and (3) of the regulations do not apply to the application, approval, exemption, or related recovery work.
- (4) Every application for an approval, an exemption, or a dispensation must include the following information, except where the Director-General or Minister of Conservation alters these requirements to make them less onerous, on a case-by-case basis:
  - (a) a description of the proposed activity, including:
    - (i) the purpose and description of the culvert, ford, dam, or diversion structure; and
    - (ii) the type of approval, exemption, or dispensation for which the applicant is applying; and
    - (iii) a description of the place where the proposed activity will be carried out (including the legal status of that place); and
    - (iv) the proposed duration of the approval, exemption, or dispensation, and the reasons for the proposed duration; and
  - (b) an assessment of the potential effects of the proposed activity, including:
    - (i) known and predicted freshwater ecosystem and fishery values of the water body or wetland; and

- (ii) an assessment of the effects on those values of providing or not providing fish passage, including the matters addressed in subclause (8); and
  - (iii) any actions that the applicant proposes to take to avoid, remedy, or mitigate any adverse effects of the proposed activity; and
  - (iv) for a ford or culvert, the name of the person who determined that fish passage was or will be impeded; and
  - (v) for a dam or diversion structure—
    - (A) whether a fish facility is proposed to be included or a dispensation sought; and
    - (B) technical specifications for any fish facility to be provided; and
  - (c) details of any consultation in addition to that required by Schedule 5; and
  - (d) relevant information relating to the applicant, including any information relevant to the applicant's ability to carry out the proposed activity.
- (5) The application must also include a report on the consultation undertaken in relation to the proposed recovery work.
- (6) The report must include the following information:
  - (a) the names and contact details of Māori entities the Agency has engaged with;
  - (b) the names of entity representatives who attended meetings on the proposed recovery work and the dates of those meetings;
  - (c) a summary of discussions, including any concerns raised about the potential adverse effects of the proposed recovery work on taonga species known or predicted to be in the area for which the approval, exemption, or dispensation is sought;
  - (d) the Agency's responses to any concerns raised.
- (7) A policy, management strategy, or management plan that would otherwise apply to fish passage does not apply in relation to the application, approval, exemption, dispensation, or recovery work.
- (8) The Director-General may decline to grant the approval, exemption, or dispensation if the Director-General considers that—
  - (a) the information provided in accordance with subclauses (4) to (6) in support of the application is insufficient to enable the adverse effects of the recovery work on the ecosystems and fisheries to be adequately assessed; or
  - (b) the conditions set out in Schedule 5 would not be sufficient to avoid—

- (i) more than minimal adverse effects on any of the following that are known or predicted to be in the water body in relation to which approval is sought:
    - (A) a naturally uncommon ecosystem:
    - (B) at-risk or threatened species (other than a species categorised as at-risk and recovering, relict, or naturally uncommon):
    - (C) a taonga species:
  - (ii) significant adverse effects on protected wildlife.
- (9) The only conditions that the Director-General may impose on the approval, exemption, or dispensation are the conditions set out in Schedule 5.
- (10) If, 20 working days after the date on which the application referred to in subclause (1) was received by the Department of Conservation, the Director-General has not granted or declined to grant the approval, exemption, or dispensation, the Agency is deemed to have been granted the approval, exemption, or dispensation with all the conditions set out in Schedule 5.

## Part 6

### **Modifications to Wildlife Act 1953 and related modifications to Conservation Act 1987**

- 40 This Part modifies the Wildlife Act 1953 and Conservation Act 1987**  
This Part modifies the Wildlife Act 1953 and the Conservation Act 1987.
- 41 Interpretation in this Part**  
In this Part, unless the context otherwise requires, **Act** means the Wildlife Act 1953.
- 42 Concession for recovery work in wildlife sanctuary, wildlife refuge, or wildlife management reserve vested in the Crown and managed by Department of Conservation**
- (1) This clause applies if for the purpose of carrying out recovery work, the Agency applies under section 14AA of the Act for a concession in respect of any wildlife sanctuary, wildlife refuge, or wildlife management reserve vested in the Crown and managed by the Department of Conservation.
  - (2) Section 14AA(1) of the Act and section 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), 17SA, 17SB to 17SE, 17T, 17U, 17W to 17Y, and 26ZI to 26ZJA of the Conservation Act 1987 do not apply in relation to the concession or the recovery work.

- (4) A prohibition or condition imposed by an Order in Council or Proclamation made under section 9, 14, or 14A of the Act does not apply in relation to the concession or the related recovery work.
- (5) Section 17S of the Conservation Act 1987 (which specifies the information required to be included in an application for a concession) continues to apply and, in addition to the information specified in that section, the application must include a report in accordance with subclause (6) on the consultation undertaken in relation to the proposed recovery work.
- (6) The report on the consultation undertaken must include the following information:
  - (a) the names and contact details of Māori entities the Agency engaged with:
  - (b) the names of entity representatives who attended meetings and the dates of those meetings:
  - (c) a summary of the discussions and, in particular, any concerns raised about potential adverse effects on taonga species known or predicted to be in the area for which the concession is sought:
  - (d) if any concerns were raised, the Agency's responses to those concerns.
- (7) A policy, management strategy, or management plan that would otherwise apply to the wildlife sanctuary, wildlife refuge, or wildlife management reserve does not apply in relation to the concession or the related recovery work.
- (8) The Minister of Conservation may decline to grant the concession if the Minister considers that—
  - (a) the information provided in accordance with subclauses (5) and (6) in support of the application is insufficient to enable the adverse affects of the proposed recovery work on the values for which the land is held to be adequately assessed; or
  - (b) the conditions in Schedule 4 would not be sufficient to avoid—
    - (i) more than minimal adverse effects on any of the following that are known or predicted to be in the area for which the concession is sought:
      - (A) a naturally uncommon ecosystem:
      - (B) an at-risk or threatened species, other than a species categorised as at-risk and recovering, relict, or naturally uncommon:
      - (C) a taonga species:
    - (ii) significant adverse effects on protected wildlife.
- (9) The only conditions that the Minister may impose on the concession are the conditions set out in Schedule 4.

- (10) If, 20 working days after the date on which the application referred to in subclause (1) was received by the Department of Conservation, the Minister has not granted or declined to grant the concession, the Agency is deemed to have been granted the concession with all the conditions set out in Schedule 4.

**43 No requirement for authority or consent to take or kill wildlife, or do anything in respect of any protected wildlife, in certain circumstances**

- (1) Subclauses (2) to (5) and clause 44 apply if—
- (a) the Agency requires (or would require but for this clause) authority or consent under either of the following provisions to take or kill any wildlife, or carry out any activity in respect of protected wildlife, in the course of carrying out recovery work within a section of railway land affected by a severe weather event and specified in Schedule 1:
    - (i) section 53 of the Act;
    - (ii) section 71 of the Act, to the extent that it relates to the Government Railways Act 1949; and
  - (b) no significant wildlife in that section of railway land has been identified by the Agency or drawn to its attention before the ecological scoping survey required by clause 5 of Schedule 4 is completed.
- (2) Sections 53 and 71 of the Act are modified as set out in this clause and clause 44.
- (3) There is no requirement for authority or consent under section 53 or 71 of the Act for the activity is waived but only if—
- (a) the Agency has complied with the procedural requirements in clause 44; and
  - (b) the Department of Conservation has not, within the time allowed under clause 44, notified the Agency that it must apply for authority or consent for the activity under section 53 or 71 of the Act; and
  - (c) the Agency complies with the conditions in Schedule 4 in relation to the activity (including, without limitation, the requirements to be followed if significant wildlife is discovered during the ecological scoping survey under clause 5 of Schedule 4 or subsequently during construction works); and
  - (d) any adverse effects on taonga species known or predicted to be in the area relating to the activity are, as far as practicable, avoided, remedied, or mitigated.
- (4) Sections 10, 14B, and 53(5) of the Act, and the power to impose conditions under section 71 of the Act, do not apply to the waiver or the activity covered by the waiver.

- (5) A policy, management strategy, or management plan that would otherwise apply to the relevant taking, killing, or other activity does not apply in relation to the waiver or the activity covered by the waiver.

#### **44 Procedural requirements for operation of clause 43**

- (1) If this clause applies (*see* clause 43), the Agency must, not less than 20 working days before the construction works commence, give the Department of Conservation a notice of work setting out the following:
- (a) a general description of the recovery work intended to be carried out;
  - (b) a general description of the site where the work is to occur, including a map of the corresponding area;
  - (c) an assessment (which may be a desktop assessment) of the potential adverse effects of the work with input from appropriate experts and including an assessment of all reasonably available information concerning those effects;
  - (d) a report on the consultation undertaken in relation to the work, which must include the following information:
    - (i) the names and contact details of Māori entities the Agency has engaged with;
    - (ii) the names of entity representatives who attended meetings and the dates of those meetings;
    - (iii) a summary of the discussions and, in particular, any concerns raised about potential adverse effects on taonga species known or predicted to be in the area;
    - (iv) the Agency's responses to any concerns raised;
    - (v) confirmation that the Māori entities the Agency engaged with have been notified in writing that the requirement for authority or consent under section 53 or 71 of the Act for the work will be waived if the requirements of clause 43 are met.
- (2) The Department of Conservation must, not later than 5 working days after receiving the notice of work, notify the Agency of—
- (a) any specific concerns that it has regarding the consultation the Agency has reported to have undertaken; and
  - (b) how those concerns may be addressed.
- (3) If subclause (2) applies, the Agency must submit an amended notice of work setting out how it has addressed the concerns raised.
- (4) The Department of Conservation must, within 10 working days after receiving a notice of work that complies with the requirements in subclause (1) and (if applicable) subclause (2), notify the Agency if—

- (a) the Director-General requires the Agency to apply for authority under section 53 of the Act for the activity; or
  - (b) the Minister of Conservation requires the Agency to apply for consent under section 71 of the Act for the activity.
- (5) The Director-General must require the Agency to apply for authority for the activity under section 53 of the Act or (as appropriate) the Minister of Conservation must require the Agency to apply for consent under section 71 of the Act, if the information provided in the notice of work or (if applicable) amended notice of work does not reasonably satisfy the Director-General or Minister that—
- (a) the Agency will comply with the conditions in Schedule 4; and
  - (b) any adverse effects on taonga species known or predicted to be in the area will, as far as practicable, be avoided, remedied, or mitigated.

**45 Authority to take or kill wildlife, or do anything in respect of any protected wildlife, in certain circumstances**

- (1) This clause applies if the Agency applies for authority under section 53 of the Act, or consent under section 71 of the Act (to the extent it relates to the Government Railways Act 1949), to take or kill any wildlife, or carry out any activity in respect of protected wildlife, in the course of carrying out recovery work in an area, and—
- (a) the area is outside but within 50 m of a section of railway land affected by a severe weather event and specified in Schedule 1; or
  - (b) the area is outside but within 500 m of a section of railway land that is specified in Part 2 of Schedule 1; or
  - (c) the area is within a section of railway land affected by a severe weather event and specified in Schedule 1 in circumstances where—
    - (i) significant wildlife in the section of railway land has been identified by the Agency or drawn to its attention before the ecological scoping survey required by clause 5 of Schedule 4 is completed; or
    - (ii) the Department of Conservation has notified the Agency under clause 44(4) that it must apply for authority under section 53 or consent under section 71 of the Act for the activity.
- (2) Sections 53 and 71 of the Act are modified as set out in this clause.
- (3) Sections 10, 14B, and 53(5) of the Act and the power to impose conditions under section 71 of the Act do not apply to the authority or consent or the activity covered by the authority or consent.
- (4) A prohibition or condition imposed by or under section 9, 14, or 14A of the Act does not apply to the authority or consent or the activity covered by the authority or consent.

- (5) Every application for an authority or consent must include the following information, except where the Director-General or Minister of Conservation alters these requirements to make them less onerous, on a case-by-case basis:
- (a) a description of the proposed activity, including—
    - (i) a general description of the recovery work that is the reason for the application; and
    - (ii) the type of authority or consent for which the applicant is applying; and
    - (iii) the places where the proposed activity will be carried out, including—
      - (A) proposed release sites; and
      - (B) the legal status of all relevant places; and
      - (C) restricted lands to which access is required; and
      - (D) maps; and
    - (iv) the proposed duration of the proposed activity, and the reason for the proposed duration; and
    - (v) wildlife species known or predicted to be in the area, including taonga species and protected wildlife; and
    - (vi) specific actions in relation to wildlife for which authority or consent is sought; and
    - (vii) the names of supervising experts requiring approval under conditions in Schedule 4; and
    - (viii) draft management plans and other matters required to implement conditions in Schedule 4:
  - (b) an assessment of the potential effects of the proposed activity on wildlife, including:
    - (i) measures, including project design and sequencing, proposed to avoid, minimise, or mitigate adverse effects on wildlife; and
    - (ii) measures proposed to address relevant matters set out in subclause (8)(b):
  - (c) details of any consultation in addition to that required by Schedule 4:
  - (d) relevant information relating to the applicant, including any information relevant to the applicant's ability to meet the requirements of relevant conditions in Schedule 4:
  - (e) in the case of an application for consent under section 71, in addition to containing the information required by paragraphs (a) to (d), the application must set out a description of:

- (i) how the project is consistent with the purpose and objectives of the relevant empowering legislation under Schedule 9 of the Wildlife Act 1953; and
  - (ii) whether and how the project is considered to be of national importance; and
  - (iii) how the project will affect any species listed in the New Zealand Threatened Species Classification and the threat status of those species; and
  - (iv) measures, including project design and sequencing, proposed to avoid or minimise adverse effects on protected wildlife.
- (6) The application must include a report on the consultation undertaken in relation to the proposed work, setting out the following information:
  - (a) the names and contact details of Māori entities the Agency has engaged with;
  - (b) the names of entity representatives who attended meetings and the dates of those meetings;
  - (c) a summary of the discussions and, in particular, any concerns raised about potential adverse effects on taonga species known or predicted to be in the relevant area for which the authority or consent is sought;
  - (d) the Agency's responses to any concerns raised.
- (7) A policy, management strategy, or management plan that would otherwise apply to the relevant taking, killing, or other activity does not apply in relation to the authority or consent or the activity covered by the authority or consent.
- (8) The Director-General or Minister of Conservation may decline to grant the authority or consent if the Director-General or Minister considers that—
  - (a) the information provided in the application in accordance with subclauses (5) and (6) is insufficient to enable the adverse effects of the proposed recovery work on significant wildlife in the area to be adequately assessed; or
  - (b) the conditions set out in Schedule 4 would not be sufficient to avoid—
    - (i) more than minimal adverse effects on any of the following that are known or predicted to be in the relevant section of railway land:
      - (A) a naturally uncommon ecosystem;
      - (B) an at-risk or threatened species, other than a species categorised by the New Zealand Threat Classification System administered by the Department of Conservation as at-risk and recovering, relict, or naturally uncommon;
      - (C) a taonga species;
    - (ii) significant adverse effects on protected wildlife.

- (9) The only conditions that the Director-General or Minister of Conservation may impose on the authority or consent are the conditions set out in Schedule 4.
- (10) If, 20 working days after the date on which the application was received by the Department of Conservation, the Director-General or Minister of Conservation has not issued or declined to issue the authority or consent, the Agency is deemed to have been granted the authority or consent with all the conditions set out in Schedule 4.

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**Guidance note**

In this order, restricted lands are Nature Reserves, Scientific Reserves, Wildlife Sanctuaries, Wildlife Refuges, and some Government Purpose Reserves.

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**46 Consent for acts carried out under other legislation in respect of wildlife and wildlife sanctuaries**

- (1) This clause modifies section 71 of the Act, to the extent that it relates to the Government Railways Act 1949.
- (2) This clause applies if the Agency requires consent under section 71 of the Act to carry out any activity that may be authorised under that section in respect of protected wildlife, or any land forming part of a wildlife sanctuary, in the course of carrying out recovery work.
- (3) The only consent required under that section is that of the Minister of Conservation (and the Agency need not obtain the consent of the Minister charged with the administration of the relevant legislation).

**Part 7****Modifications to Railways Act 2005 and New Zealand Railways Corporation Act 1981****47 Acts this Part modifies**

This Part modifies the Railways Act 2005 and the New Zealand Railways Corporation Act 1981.

**48 Modifications to sections 76 and 77 of Railways Act 2005**

- (1) Section 76(2) of the Railways Act 2005 applies as if “(in accordance with section 78)” were deleted.
- (2) Section 77(3) of the Railways Act 2005 applies as if “(in accordance with section 78)” were deleted.

**49 Further modifications to sections 77 and 78 of Railways Act 2005**

- (1) This clause modifies sections 77 and 78 of the Railways Act 2005.

- (2) This clause applies if the Agency, for the purpose of carrying out recovery work, gives written notice to a person under section 78 of the Railways Act 2005 to do an act under sections 76 or 77 of that Act.
- (3) Section 78(1) of that Act applies as if paragraph (a) were replaced with:
  - (a) must inform the person concerned of the right to provide, within 48 hours of receiving the notice, the licensed access provider or railway premises owner with information that must be taken into account by that access provider or owner.
- (4) Sections 78(2) to (4) are disapplied.
- (5) Sections 78 applies as if subsections (5) and (6) were replaced with:
  - (5) If a notice given under section 76(2) is not set aside and the person concerned neglects, for a period of 10 working days, to extinguish, remove, or screen effectively the fire, light, structure, signal, or radiation specified in the notice, the licensed access provider may, after giving reasonable notice to that person,—
    - (a) enter the place where the fire, light, structure, or source of the signal or radiation is located and extinguish, remove, or screen it in a manner that does not cause unnecessary damage; and
    - (b) recover the expenses incurred in doing this as a debt due to the licensed access provider from that person.
  - (6) If a notice given under section 77(3) is not set aside and the person concerned neglects, for a period of 10 working days after the notice is given, to comply with the notice, the licensed access provider or railway premises owner or person entering on their behalf may, if reasonable notice is given to that person,—
    - (a) enter on the land and, without causing any unnecessary damage, carry out those acts necessary to comply with the notice; and
    - (b) recover the cost of doing so as a charge upon the land.

#### **50 Modifications to section 86(1) of Railways Act 2005**

- (1) This clause modifies section 86(1) of the Railways Act 2005.
- (2) Section 86(1) of the Railways Act 2005 applies as if subsection (1) were replaced with:
  - (1) In the case of recovery works relating to railway infrastructure existing as at the date of this order, a licensed access provider for that railway infrastructure—
    - (a) may enter any land or premises (excluding any dwellinghouse or marae) at,—
      - (i) in the case of an emergency, any time; or

- (ii) in any other case, any time during the ordinary hours of business for the purpose of gaining access to that railway infrastructure; and
- (b) may perform any act or operation necessary for the purposes of the recovery works.

#### **51 Modifications to section 14 of New Zealand Railways Corporation Act 1981**

- (1) This clause modifies section 14 of the New Zealand Railways Corporation Act 1981.
- (2) Section 14(5) applies as if “The Corporation” were replaced with “Subject to subsection (5A), the Corporation”.
- (3) Section 14 applies as if the following subsection were inserted after subsection (5):
- (5A) Subsection (5) does not apply to any closure, temporary cessation, withdrawal, or reduction of service on a railway line that has occurred as a result of—
  - (a) the severe weather events referred to in the Severe Weather Emergency Recovery Legislation Act 2023; or
  - (b) anything done to recover from those events.

#### **52 Modifications to section 31 of New Zealand Railways Corporation Act 1981**

- (1) This clause modifies section 31 of the New Zealand Railways Corporation Act 1981.
- (2) Section 31 applies as if after subsection (2) the following subsection were inserted:
- (2A) A notice under subsection (2) must inform the occupier or owner of the land of the right to provide, within 48 hours of receiving the notice, the Corporation with information that must be taken into account by the Corporation in respect of any decision by the Corporation in relation to—
  - (a) entry onto the land; or
  - (b) seeking the recovery of costs.
- (3) Section 31(3) and (4) are disappplied.
- (4) Section 31 applies as if subsection (5) were replaced with:
- (5) If the occupier or owner fails to comply with the notice within 10 days after the date of service, the Corporation may—
  - (a) enter the land to do the things required by the notice; and
  - (b) recover the costs of doing so.

**53 Modifications of section 48(e) of New Zealand Railways Corporation Act 1981**

- (1) This clause modifies section 48(e) of the New Zealand Railways Corporation Act 1981.
- (2) Section 48(e) applies as if “3 months” were replaced with “48 hours”.

## Schedule 1

### Affected sections of rail routes

cls 4(1), 21, 42

### Part 1

Relevant area	Affected rail routes	Kilometre markers and NZTM co-ordinates
Manawatu–Whanganui	Palmerston North to Gisborne Line (PNGL): Dannevirke to Kopua Viaduct (22 km)	55–77 km PNGL: x 1864522 and y 5545772 to x 1879865 and y 5556613
Hawke’s Bay	PNGL: south of Hastings to Wairoa (104 km)	280–296 km PNGL (Wairoa): x 1972541 and y 5667950 to x 1983715 and y 5671158  191–268 km PNGL (Eskdale to Waihua): x 1933962 and y 5630691 to x 1963517 and y 5666081  168–172 km PNGL (Clive to Awatoto): x 1935734 and y 5611356 to x 1936903 and y 5614959  143–151 km PNGL (Te Hauke to Paki Paki): x 1920139 and y 5592726 to x 1925268 and y 5598607
	PNGL: Wairoa to regional boundary (51 km)	296–347 km PNGL: x 1983715 and y 5671158 to x 2021174 and y 567578
Gisborne	PNGL: full distance in Gisborne Region (44 km)	347–391 km PNGL: x 2021174 and y 5675768 to x 2037451 and y 5707652
Auckland	North Auckland Line (NAL): Kanohi to regional boundary (47 km)	83–130 km NAL: x 1736287 and y 5953125 to x 1733050 and y 5990276
Northland	NAL: regional boundary to south of Whangārei (67 km)	130–197 km NAL: x 1733050 and

<b>Relevant area</b>	<b>Affected rail routes</b>	<b>Kilometre markers and NZTM co- ordinates</b>
		y 5990276 to x 1712473 and y 6030519

## Part 2

<b>Relevant area</b>	<b>Affected rail routes</b>	<b>Kilometre markers and NZTM co- ordinates</b>
Hawke's Bay	PNGL: Awatoto	168–172 km PNGL: x 1935734 and y 5611356 to x 1936903 and y 5614959
	PNGL: Esk Valley	191–201 km PNGL: x 1933962 and y 5630691 to x 1928292 and y 5635824

## Schedule 2

### Resource consent conditions

cls 6, 8, 10, 12, 13

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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 without undue delay, because of or in connection with a severe weather event,—
  - (a) to repair and rebuild the affected rail route in the same or a similar location; or
  - (b) to enhance the safety and improve the resilience of an affected rail route.
- (2) The activities are all temporary and permanent activities for rail transport requiring consent under section 9(2), 12, 13, 14, or 15 of the RMA.

## 2 Ongoing application of conditions

- (1) Except where expressly provided in these conditions, the conditions in this schedule relate to construction of a project and apply only to construction works.
- (2) Once the construction of the recovery works are completed, the conditions no longer apply and may be removed from the resource consent.

## 3 Definitions

In this schedule,—

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

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

**affected rail route** has the meaning given in clause 4 of this order

**construction works** means the authorised activities outlined in clause 1, excluding minor works and operational activities

**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

**earthworks principles** means the earthworks principles set out in clause 7

**ecological principles** means the ecological principles set out in clause 18(2)

**minor works** means preliminary activities, including geotechnical investigations and establishment of mitigation measures, and minor upgrading and repair

**operational activities** means works associated with the ongoing operation and maintenance of the project following construction

**project** means the recovery work outlined in clause 1.

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

**4 Kaitiaki adviser**

- (1) At least 20 working days before starting construction works, the consent holder must invite each of the relevant iwi or hapū or iwi and hapū (for the particular works) to appoint 1 kaitiaki adviser (collectively, the **kaitiaki adviser**) to undertake the roles and responsibilities as set out in these conditions.
- (2) The kaitiaki adviser may be supported by a team of cultural monitors, mandated by the relevant iwi or hapū or iwi and hapū, who can provide on-site guidance to the consent holder to enable the effective management of cultural indicators.
- (3) The consent holder must invite the kaitiaki adviser to provide cultural indicators covering traditional associations, such as mahinga kai, cultural stream health, wāhi tapu, wāhi tupuna, standing orders, protocols, and cultural heritage.
- (4) The consent holder must, in the preparation of any plans required under these conditions,—
  - (a) take into account any cultural indicators provided; and
  - (b) as soon as practicable, provide an explanation to the kaitiaki adviser of how the indicators have been taken into account.

**5 Affected area recovery 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, and iwi, hapū, or both to be part of an affected area recovery liaison group.
- (2) The purpose of the affected area recovery liaison group is to help inform the design, management, and monitoring of all construction works.
- (3) The consent holder must prepare terms of reference for the affected area recovery liaison group to be discussed and agreed (by consensus, if possible) at the group's first meeting.
- (4) The terms of reference must include details about the frequency of meetings and number of members of the affected area recovery liaison group and set out methods and processes to enable the group to help inform the design, management, and monitoring of all construction works.
- (5) The consent holder must—
  - (a) keep a record of any comments provided by the affected area recovery liaison group with respect to the design, management, and monitoring of the construction works; and

- (b) as far as practicable, provide an explanation to the affected area recovery liaison group of how the comments have been taken into account.
- (6) If the affected area recovery liaison group cannot, by consensus, agree on the terms of reference at its first meeting, the terms of reference must be determined—
  - (a) by majority vote (with 1 vote for each organisation represented on the group, including the consent holder); or
  - (b) if votes on the terms of reference are tied, by the casting vote of the consent holder.

## **6 Construction environmental management plan**

- (1) The consent holder must—
  - (a) prepare a construction environmental management plan (**CEMP**) for the construction works; and
  - (b) not less than 5 working days before commencing the construction works, submit the CEMP to the Council and the affected area recovery liaison group for their information.
- (2) The level of detail and the measures proposed in the CEMP must correspond with the nature and scale of the relevant construction works.
- (3) The CEMP must include the following:
  - (a) the roles and responsibilities of construction management staff, including the erosion and sediment control manager required by clause 8(4)(i):
  - (b) a description of the training and education programme that will be implemented to ensure compliance with the conditions:
  - (c) procedures for hazard management, including fire hazard, identification, and control:
  - (d) procedures for managing dust from earthworks and related activities so that dust nuisance does not spread beyond the boundary of the project area:
  - (e) procedures for managing dewatering (including avoiding to the extent practicable or minimising effects on adjacent buildings), groundwater or surface water takes, and diversions and discharges to land or water (including the coastal marine area):
  - (f) the details of at least 2 emergency contacts and responders, who must be contactable 24 hours a day 7 days a week during construction and have authority to authorise immediate response actions:
  - (g) the contact details of any construction staff living on site during the project construction:
  - (h) methods for responding to queries and complaints:
  - (i) methods for amending and updating the CEMP as required:

- (j) details of the process to be used to identify, record, and investigate incidents:
  - (k) details (including timing) of reporting to consent authorities of the outcomes of, and compliance with, the CEMP:
  - (l) details of how the ecological principles will guide environmental outcomes:
  - (m) the erosion and sediment control plan set out in clause 8.
- (4) At least 5 working days before finalising the CEMP or any amendment under subclause (6) to the CEMP, the consent holder must invite comments from the Council and members of the affected area recovery liaison group and must have regard to any such comments when finalising the CEMP, or the amendment, as the case requires.
- (5) The consent holder must implement the CEMP for the duration of construction work.
- (6) A CEMP may be amended by the consent holder, if necessary, to reflect any changes in design, construction methods, maintenance and operations methods, or procedures for managing effects.
- (7) An amended CEMP must be supplied by the consent holder to the Council and the affected area recovery liaison group for information within 10 working days of the amendments being completed.

### *Earthworks*

#### **7 Earthworks principles**

- (1) The consent holder must undertake all construction works in a manner that—
- (a) minimises the volume, area, and duration of the proposed earthworks required for the project through methodologies, including the design of batter slopes, appropriate to expected soil types and geology:
  - (b) maximises the effectiveness of erosion and sediment control measures associated with earthworks by minimising potential for sediment generation and sediment yield:
  - (c) minimises, and takes all reasonable steps to avoid, adverse effects on freshwater and marine water environments within or beyond the project boundary, with particular regard to reducing opportunities for the project to generate sediment:
  - (d) minimises adverse effects on outstanding natural features, outstanding natural landscapes, and areas of outstanding natural character (as specified in a regional plan or policy statement for the relevant area):
  - (e) minimises adverse effects on culturally significant land.
- (2) The consent holder must, as far as practicable, ensure that earthworks are carried out in accordance with the ecological principles.

**8 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 earthworks principles will be applied.
- (2) The level of detail and the measures proposed in the ESCP must correspond to the nature and scale of the relevant construction works.
- (3) The ESCP must include a project-specific risk-based approach that allows for the ESCP to determine the level of information and design that must be provided for specific projects or activities or both.
- (4) The ESCP must specify the following:

*General*

- (a) how the construction works will be carried out in accordance with the ecological principles:
- (b) appropriate structural (including chemical treatment where necessary) and non-structural erosion and sediment control measures to be installed before and during all construction works for representative parts of the project, including earthworks, coastal works, and works within water-courses:
- (c) key environmental risks, particularly in relation to topography, soil type and form, and the receiving environment, including proximity to any sensitive receivers:
- (d) the approach and procedures for ensuring advance warning of a rainfall event:
- (e) procedures for decommissioning the erosion and sediment control measures:
- (f) procedures for determining the staging and sequencing of earthworks:
- (g) which construction works are intended to be carried out under this resource consent, and which activities are carried out under section 330 of the RMA:
- (h) methods for amending and updating the ESCP as required:

*Erosion and sediment control manager*

- (i) an appropriately qualified and experienced erosion and sediment control manager, who must be responsible for—
  - (i) ensuring compliance with the CEMP and ESCP; and
  - (ii) subject to paragraph (j), liaising with any erosion and sediment control manager or managers appointed in respect of any other recovery works; and

- (iii) liaising with the Council in respect of the implementation of the ESCP, including in respect of any incident falling within their duties under paragraph (j):
- (j) that the erosion and sediment control manager appointed in respect of the project may also fulfil the same function in respect of any other recovery works:

*Responsibilities*

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

*Incident management*

- (l) the process for identifying, recording, investigating, and notifying the Council of 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:

*Monitoring*

- (m) a procedure for ongoing visual appraisals, and where necessary quantitative monitoring, of all erosion and sediment control measures, including details of analysis of trends in erosion and sediment control effectiveness and performance and consequential erosion and sediment control amendments.

## **9 What happens if sediment control measure fails**

- (1) 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 after the failure.
- (2) If a survey identifies significant adverse effects, the consent holder, in consultation with the Council, must, as soon as practicable, develop and implement appropriate remedial measures (which may include offsets) commensurate to the scale of the effects.
- (3) Not less than 5 working days before starting construction works, the consent holder must submit a hard copy of the ESCP to the Council for information. The ESCP must meet the design criteria of the relevant regional ESC Guideline.
- (4) The consent holder must implement the ESCP submitted in accordance with subclause (3) for the duration of the construction works.

*Erosion and sediment control criteria*

- (5) The ESCP must include details (including timing) of reporting to consent authorities of the outcomes of, and compliance with, the ESCP.

*Erosion and sediment control devices*

- (6) The consent holder must design, construct, and maintain all erosion and sediment control measures to comply with the guideline referred to in subclause (3).

**10 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.

**11 Contaminated land**

- (1) Subclauses (2) and (3) apply if the consent holder undertakes earthworks or soil disturbance on contaminated land.
- (2) The consent holder must dispose of any material removed from a site identified as being contaminated to a facility authorised to receive material of that kind.
- (3) The consent holder must take all practicable measures to—
- (a) prevent the discharge of soil and stormwater from contaminated land to waterways; and
  - (b) maintain the integrity of any structure designed to contain contaminated soil or other contaminated materials; and
  - (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 apply.

*Works in watercourse***12 Requirements for works and structures in the beds of watercourses**

- (1) All construction works in the bed of a river must be carried out in accordance with—
- (a) the ESCP prepared in accordance with clause 8; and
  - (b) the ecological principles; and
  - (c) the earthworks principles; and
  - (d) any cultural indicators prepared by the kaitiaki adviser under clause 4(3).
- (2) Where practicable, construction works and associated temporary activities in the bed of a river must be undertaken with temporary diversions, secondary flow paths, or both, in place to accommodate flows up to the 20-year ARI flood flow event.

- (3) Where practicable, construction works must be undertaken outside peak fish migration times for the species identified as present in the waterway in the ecological scoping survey required by clause 18(3).
- (4) Permanent works in the bed of a river (for example, sediment and debris removal, bank protection, and capacity increase) must—
  - (a) be designed and installed to be consistent with the ecological principles; and
  - (b) allow for the 100-year ARI flood flow event (including allowances for climate change), or local standard if it is higher; and
  - (c) take all reasonable steps in the circumstances, having regard to the purpose of the Act, to avoid stream loss where threatened or at-risk species are present, and otherwise minimise stream loss; and
  - (d) be designed by a suitably qualified and experienced engineer and a suitably qualified and experienced ecologist to provide for ongoing fish passage.
- (5) Permanent culvert design (where in the bed of a river) must allow for the 100-year ARI flood flow event, or local standard if it is higher, with allowances for climate change effects and freeboard, through specific design, overland flow path provisions, or both; and—
  - (a) address the risks of non-performance, such as blockage, taking into account the risk of a soil or rock debris flow; and
  - (b) be consistent with the requirements of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020; and
  - (c) using the best practicable option, incorporate energy dissipation and erosion control measures to minimise the occurrence of bed scour and bank erosion in receiving environments.

### **13 Construction requirements if clause 12 applies**

- (1) This clause applies if clause 12 applies.
- (2) Fish passage must be provided and maintained on all permanent culverts in accordance with clause 12(4)(d) unless a suitably qualified ecologist decides it is unnecessary and, in that case,—
  - (a) appropriate data and reasons for this decision must be provided with the design drawings to the Council; and
  - (b) the Department of Conservation must also be advised if culverts that do not provide fish passage are necessary.
- (3) At least 10 working days before starting permanent works within a water-course, the consent holder must submit hard copies of the design drawings for permanent culverts (including fish passage), bridges, and permanent stream

- diversions, along with a statement of how those details meet the requirements of clause 12(2) to (5), to the Council for information.
- (4) All permanent works in the bed of a river must be carried out in accordance with designs provided to the Council under subclause (3).
  - (5) The consent holder must ensure that any machinery or equipment used in the activities authorised by the consent is not stored in or on the bed or banks of the watercourse.
  - (6) 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; and
    - (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; and
    - (c) the storage of fuel or contaminants adjacent to a watercourse does not result in any fuel or contaminants entering water; and
    - (d) other fuels and lubricants, but excluding sediment, are not released into water in a watercourse; and
    - (e) the Ministry for Primary Industries' requirements and clean dry protocols relating to didymo and freshwater pests are followed in relation to all equipment; and
    - (f) the use of wet concrete is avoided in flowing water.
  - (7) 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—
    - (a) removed on completion of the construction works; and
    - (b) disposed of in an appropriate manner and in a place where they will not affect floodwaters and watercourses.
  - (8) The consent holder must comply with all notices and guidelines issued by Biosecurity New Zealand that relate to preventing the spread of freshwater pests.

### *Stormwater discharge*

#### **14 Stormwater discharge**

- (1) New land drains must be designed to accommodate the 20-year ARI flood flow event or other standard as applies to the specific drainage scheme affected, and must include appropriate erosion control.
- (2) The consent holder must, not later than 3 months after the completion of the construction works,—

- (a) document the operation and maintenance requirements of the stormwater treatment devices, including sediment traps; and
  - (b) submit the documents to the Council.
- (3) 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 structures*

#### **15 Coastal structures**

- (1) All works in the CMA and on land adjacent to the CMA must be carried out in accordance with an ESCP prepared in accordance with clause 8.
- (2) Permanent structures in the CMA and on land adjacent to the CMA (for example, sea walls, rock revetments, or groynes) must be designed by a suitably qualified and experienced coastal engineer, ecologist, and registered landscape architect, who must—
  - (a) have regard to the ecological principles and the project landscape and cultural values; and
  - (b) consider and incorporate measures to address the effects of climate change and sea level rise.
- (3) The consent holder must maintain any construction site in good order and, where appropriate, remedy, as far as practicable, any damage to 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 as soon as practicable after the issue is identified.
- (5) In this clause, **land adjacent to the CMA** means the area of land subject to storm surge and wave run-up, including climate change effects for the relevant design life for the Shared Socioeconomic Pathway (SSP) 5.85 medium confidence projection.
- (6) Despite subclause (2), the registered landscape architect referred to in that subclause must not be involved in the design of any rail bridge.

#### **16 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 any 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 Act, to remedy or mitigate any adverse effects on the environment resulting from the escape.

## 17 Construction noise

- (1) Construction noise must comply, as far as practicable, with the long-term duration limits provided in Table 2 and Table 3 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.

## 18 Ecology

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

### *Ecological principles*

- (2) The following ecological principles must be used to guide the project design and construction (temporary and permanent works):
  - (a) to avoid as far as practicable, and minimise,—
    - (i) permanent habitat loss (including in coastal, terrestrial, and fresh-water habitats):
    - (ii) loss of naturally uncommon and highly depleted ecosystem types, significant indigenous vegetation, significant habitats of indigenous fauna, and habitats for at-risk or threatened species and taonga species:

- (iii) habitat fragmentation or habitat barriers (including in coastal, terrestrial, and freshwater habitats):
  - (iv) impacts on habitat connectivity (including coastal, terrestrial, and freshwater habitats):
  - (v) impacts on at-risk or threatened species and taonga species:
  - (vi) adverse effects on water quality (including on kaimoana and mauri) from sediment:
  - (vii) to the extent practicable, alteration of natural hydrology patterns:
  - (viii) the potential for the spread or establishment, or both, of pest plants or animals (including in coastal, terrestrial, and freshwater habitats):
  - (ix) impacts on habitats that play an important role in the life cycle and ecology of native species:
- (b) as far as practicable, to create safe habitats, especially for at-risk or threatened species and taonga species.

*Ecological scoping survey*

- (3) Before construction works begin in a relevant area under clause 45 of this order, 1 or more suitably qualified and experienced ecologists must, together with any suitably qualified and experienced person nominated by relevant iwi and hapū, complete an ecological scoping survey and a subsequent ecological effects assessment of the relevant construction works area, and adjacent areas within the project footprint, to identify—
- (a) any naturally uncommon ecosystems; and
  - (b) any at-risk or threatened species; and
  - (c) any taonga species (*see* guidance note at clause 19) that may be significantly adversely affected during or as a result of construction.
- (4) The ecological scoping survey and subsequent ecological effects assessment must be carried out in general accordance with Appendix 1 of the National Policy Statement for Indigenous Biodiversity.
- (5) The consent holder must provide a copy of the final ecological scoping survey and subsequent ecological effects assessment to each member of the affected area recovery liaison group as soon as practicable after completion.
- (6) In this clause, **highly depleted** means less than 20% of indigenous cover remains in the land environment.

**19 Minimising ecological loss**

- (1) If any indigenous flora or fauna (including taonga species) referred to in clause 18(3) 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 Act), or to minimise any direct or indi-

rect adverse effects on those flora or fauna (including, where relevant, kauri dieback disease), taking into account the ecological principles, including the preparation of ecological management plans.

- (2) Any measures taken under subclause (1) must be—
  - (a) recorded by the consent holder at regular intervals during the term of construction; and
  - (b) reported by the consent holder to the affected area recovery liaison group every 2 months together with any recommendations by the project ecologist, working with the kaitiaki adviser, to change those measures.
- (3) The consent holder must implement and comply with any ecological management plans prepared under subclause (1) for the duration of the construction works.
- (4) The consent holder must provide a copy of any ecological management plans prepared under subclause (1) to the members of the affected area recovery liaison group.
- (5) The consent holder must keep a record of any habitat identified in the ecological scoping survey carried out under clause 18(3) that is lost as a result of the project.

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**Guidance note**

The consent holder should engage with the relevant Māori entities to identify taonga species that may be present in the project area.

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*Reclamation*

**20 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 its 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, including an appropriate allowance for sea-level rise;
  - (e) any opportunities to enhance public access to and along the CMA;
  - (f) any opportunities to enhance marine species' habitat;

- (g) the ecological principles:
  - (h) landscape, amenity values, and natural character.
- (3) Any reclamation must be carried out in accordance with an ESCP prepared in accordance with clause 8.

## 21 Fill and soil replacement

All fill material imported from outside the project area to be used in a reclamation must come within the definition of cleanfill as detailed in Technical Guidelines for Disposal to Land, Revision 3.1, published by the Waste Management Institute New Zealand, September 2023.

### *Review*

## 22 Review of conditions

- (1) For the purposes of section 128(1)(a) of the RMA, the Council may, at any permitted times, 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 it is appropriate to deal with at a later stage; and
  - (b) review the adequacy of any monitoring.
- (2) In this clause, **permitted times** means—
- (a) within 6 months after the first anniversary of the date the construction work is commenced:
  - (b) within 6 months after the second anniversary of the date the construction work is commenced:
  - (c) within 6 months after the fifth anniversary of the date the construction work is commenced.

## Schedule 3

### Designation and consent conditions

cls 6(3), 8, 10, 12, 13

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#### **1 Authorised activities**

- (1) The conditions in this schedule apply to—
  - (a) a notice of a requirement to alter the boundaries of a designation referred to in clause 17 of this order; and
  - (b) a resource consent that authorises any activities specified in subclause (2) that it is necessary or desirable to undertake without undue delay because of, or in connection with, a severe weather event to—
    - (i) repair and rebuild an affected rail route in the same or a similar location; or
    - (ii) enhance the safety, and improve the resilience of, an affected rail route.
- (2) The activities are all temporary and permanent activities for rail transport requiring consent under section 9(1) and (3) of the RMA.
- (3) As soon as practicable following completion of construction of the project to which a notice of requirement relates, the requiring authority must give notice to the Council in accordance with section 182 of the RMA to remove those parts of the designation that are not required for the long-term operation, maintenance, and mitigation of the effects of the project.

## 2 Ongoing application of conditions

- (1) Except where expressly provided for in these conditions, the conditions in this schedule relate to construction of the project and apply only to construction works.
- (2) Once the project is operational, the conditions no longer apply and may be removed from the designation or the resource consent, as the case may require.

## 3 Definitions

In this schedule,—

**construction works** means the authorised activities outlined in clause 1, excluding minor works and operational activities

**Council** means, in the case of a designation granted by a territorial authority, the territorial authority in whose district the works are to be undertaken

**ecological principles** means the ecological principles set out in clause 11(2)

**minor works** means preliminary activities, including geotechnical investigations and establishment of mitigation measures, and minor upgrading and repair

**operational activities** means works associated with the ongoing operation and maintenance of the project following construction

**project** means the recovery work outlined in clause 1.

## 4 Stakeholder and communications plan

- (1) Before starting construction works, the Agency 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 about key project milestones:
  - (d) identifying stakeholders such as educational facilities, iwi groups, community groups, business groups, residents' organisations, the Council, the regional council, and local boards:
  - (e) responding to queries and complaints.

- (3) The Agency must implement the stakeholder and communications plan for the duration of the construction works.

## **5 Kaitiaki adviser**

- (1) At least 20 working days before starting construction works, the Agency must invite each of the relevant iwi or hapū or iwi and hapū (for the particular works) to appoint 1 kaitiaki adviser (collectively, the **kaitiaki adviser**) to undertake the roles and responsibilities as set out in these conditions.
- (2) The kaitiaki adviser may be supported by a team of cultural monitors, mandated by the relevant iwi or hapū or iwi and hapū, who can provide on-site guidance to the Agency to enable effective management of cultural indicators.
- (3) The Agency must invite the kaitiaki adviser to provide cultural indicators covering traditional associations, such as mahinga kai, cultural stream health, wāhi tapu, wahi tūpuna, standing orders, protocols, and cultural heritage.
- (4) The Agency must, in the preparation of any plans required under these conditions,—
  - (a) take into account any cultural indicators provided; and
  - (b) as soon as practicable, provide an explanation to the kaitiaki adviser of how the indicators have been taken into account.

## **6 Affected area recovery liaison group**

- (1) At least 20 working days before starting construction works, the Agency 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, and iwi, hapū, or both to be part of an affected area recovery liaison group.
- (2) The purpose of the affected area recovery liaison group is to help inform the design, management, and monitoring of all construction works.
- (3) The Agency must prepare terms of reference for the affected area recovery liaison group to be discussed and agreed (by consensus, if possible) at the group's first meeting.
- (4) The terms of reference must include details about the frequency of meetings and number of members of the affected area recovery liaison group and set out methods and processes to enable the group to help inform the design, management, and monitoring of all construction works.
- (5) The Agency must—
  - (a) keep a record of any comments provided by the affected area recovery liaison group with respect to the design, management, and monitoring of the construction works; and
  - (b) as far as practicable, provide an explanation to the affected area recovery liaison group of how the comments have been taken into account.

- (6) If the affected area recovery 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 Agency); or
  - if votes on the terms of reference are tied, by the casting vote of the Agency.

## 7 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**

- “(T)” is a representative assessment duration between 10 and 60 minutes.
  - 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

Receiver	Location	Detail	Category A	Category B
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) Vibration—continuous	5 mm/s PPV	BS 5228–2 Table B.2  BS 5228–2 50% of Table B.2 values

**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.

- (4) In this clause, **PPF** means protected premises and facilities, which 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)

## 8 Construction noise and vibration management plan

- (1) The requiring authority must—
- (a) prepare a construction noise and vibration management plan that identifies how the requirements in clause 7 will be met; and
  - (b) not less than 5 working days before commencing the construction works, submit that plan to the Council and the affected area liaison group for their information.
- (2) The objective of the construction noise and vibration management plan is to identify the best practicable option for management and mitigation of construction noise and vibration, including where full compliance with the criteria in clause 7 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, as well as a mechanism to update the construction noise and vibration management plan when new information becomes available throughout the construction period.
- (4) For the purposes of this schedule, the term **noise** in that plan includes both noise and vibration.

## 9 Cultural landscape and urban design framework

- (1) If any project contains structures that will be materially visible from public viewpoints, the requiring authority must design and construct the project to appropriately integrate the permanent works into the surrounding landscape, having regard to—
- (a) any recognised high-value landscapes such as outstanding natural features, outstanding landscapes, or outstanding natural character areas; and

- (b) the local landscape (including cultural, ecological, and heritage values and character) within the context of the project; and
  - (c) cultural, community, and tourism opportunities (for example, interpretation and viewing areas), within the context of the project; and
  - (d) rehabilitation and enhancement opportunities (for example revegetation) of degraded landscapes.
- (2) Within 60 working days after starting construction works for any project containing structures that will be materially visible from public viewpoints, the Agency must prepare a cultural, landscape, and urban design framework to identify how the requirements in subclause (1) will be met.
- (3) The cultural, landscape, and urban design framework must be consistent with the following design principles:
- (a) designing appropriate responses for the cultural and environmental context:
  - (b) supporting community cohesion:
  - (c) maintaining and, where practicable, improving local connectivity:
  - (d) respecting cultural heritage and other heritage values:
  - (e) designing with natural elements, patterns, and processes wherever possible:
  - (f) creating a positive user experience:
  - (g) achieving a low-maintenance design.
- (4) The cultural, landscape, and urban design framework must be prepared by a suitably qualified urban designer and landscape architect.
- (5) In preparing the cultural, landscape, and urban design framework, the requiring authority must invite comments from the kaitiaki adviser and have regard to their comments in preparing that framework.

## **10 Construction lighting**

- (1) Lighting of any yard, compound, construction area, or office complex located within the designation must be designed to avoid light spill beyond the boundary.
- (2) Glare from any lighting must be kept below the recommended specifications given in AS4282-1997 Control of the obtrusive effects of outdoor lighting, Tables 2.1 and 2.2.

## **11 Ecology**

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

*Ecological principles*

- (2) The following ecological principles must be used to guide the project design and construction (temporary and permanent works):
- (a) to avoid as far as practicable, and minimise,—
    - (i) permanent habitat loss (including in coastal, terrestrial, and fresh-water habitats):
    - (ii) loss of naturally uncommon and highly depleted ecosystem types, significant indigenous vegetation, significant habitats of indigenous fauna, and habitats for at-risk or threatened species and taonga species:
    - (iii) habitat fragmentation or habitat barriers (including in coastal, terrestrial, and freshwater habitats):
    - (iv) impacts on habitat connectivity (including coastal, terrestrial, and freshwater habitats):
    - (v) impacts on at-risk or threatened species and taonga species:
    - (vi) adverse effects on water quality (including on kaimoana and mauri) from sediment:
    - (vii) to the extent practicable, alteration of natural hydrology patterns:
    - (viii) the potential for the spread or establishment, or both, of pest plants or animals (including in coastal, terrestrial, and freshwater habitats):
    - (ix) impacts on habitats that play an important role in the life cycle and ecology of native species:
  - (b) as far as practicable, to create safe habitats, especially for at-risk or threatened species and taonga species.

*Ecological scoping survey*

- (3) Before construction works begin, 1 or more suitably qualified and experienced ecologists must, together with any suitably qualified and experienced person nominated by relevant iwi and hapū, complete an ecological scoping survey and a subsequent ecological effects assessment of the relevant construction works area, and adjacent areas within the designation, to identify—
- (a) any naturally uncommon ecosystems; and
  - (b) any at-risk or threatened species; and
  - (c) any taonga species (*see* guidance note at clause 12) that may be significantly adversely affected during or as a result of construction.
- (4) The ecological scoping survey and subsequent ecological effects assessment must be carried out in general accordance with Appendix 1 of the National Policy Statement for Indigenous Biodiversity.

- (5) The Agency must provide a copy of the final ecological scoping survey and subsequent ecological effects assessment to each member of the affected area recovery liaison group as soon as practicable after completion.
- (6) In this clause, **highly depleted** means less than 20% of indigenous cover remains in the land environment.

## 12 Minimising ecological loss

- (1) If any indigenous flora or fauna (including taonga species) referred to in clause 11(3) 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 Act) or to minimise any direct or indirect adverse effects on those flora or fauna (including, where relevant, kauri dieback disease), taking into account the ecological principles, including the preparation of ecological management plans.
- (2) Any measures taken under subclause (1) must be—
  - (a) recorded by the Agency at regular intervals during the term of construction; and
  - (b) reported by the Agency to the affected area recovery liaison group every 2 months together with any recommendations by the project ecologist, working with the kaitiaki adviser, to change those measures.
- (3) The Agency must implement and comply with any ecological management plans prepared under subclause (1) for the duration of the construction works.
- (4) The Agency must provide a copy of any ecological management plans prepared under subclause (1) to the members of the affected area recovery liaison group.
- (5) The Agency must keep a record of any habitat identified in the ecological scoping survey carried out under clause 11(3) that is lost as a result of the project.

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### Guidance note

The Agency should engage with the relevant Māori entities to identify taonga species that may be present in the project area.

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## 13 Cultural heritage and archaeology

- (1) Before starting construction works, the requiring authority must undertake an assessment of publicly available information to identify, within the project area,—
  - (a) recorded archaeological sites and entries on the New Zealand Heritage List/Rārangi Kōrero; and
  - (b) cultural heritage sites listed in a relevant regional or district plan.
- (2) The assessment must also include a record of any sites identified by the kaitiaki adviser under clause 5(3).

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- (3) A record of any sites identified under subclause (1) must be provided to the kaitiaki adviser.
  - (4) Any information recorded under subclause (2) must be provided to Heritage New Zealand Pouhere Taonga.
  - (5) For all sites identified under subclause (1), a suitably qualified and experienced archaeologist and the kaitiaki adviser (or their delegate) must be present during construction works that may affect the site to—
    - (a) avoid where practicable, or minimise effects on, cultural, heritage, and archaeological sites:
    - (b) record all cultural, heritage, and archaeological sites within the designation, including any proposed to be affected by the construction works or ongoing operation.
  - (6) If any archaeological material, including any historical or cultural material of Māori origin, or likely to have significance to Māori, is found or uncovered during the undertaking of the recovery works, then—
    - (a) work within 20 m of the area must cease immediately, the area must be secured, and any uncovered material must remain untouched:
    - (b) advice of the discovery must be given as soon as possible within 24 hours to—
      - (i) the relevant iwi authority; and
      - (ii) Heritage New Zealand Pouhere Taonga:
    - (c) work must not recommence in that area unless it is undertaken in accordance with an archaeological authority that has been issued by Heritage New Zealand Pouhere Taonga, or unless Heritage New Zealand Pouhere Taonga confirms in writing that no archaeological authority is required:
    - (d) work may only recommence with the presence of the kaitiaki adviser or a mandated cultural monitor.

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**Guidance 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 for Culture and Heritage in consultation with iwi.

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

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**Schedule 4**  
**Conditions for waivers, concessions, authorities, and consents under**  
**Conservation Act 1987, Reserves Act 1977, and Wildlife Act 1953**

cls 30, 42–45

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## 1 Authorised activities

- (1) The conditions in this schedule apply to—
  - (a) a concession issued for recovery works—
    - (i) on land held under the Conservation Act 1987; or
    - (ii) in a Crown reserve managed by the Department of Conservation under the Reserves Act 1977; or
    - (iii) in a wildlife sanctuary, wildlife refuge, or wildlife management reserve vested in the Crown and managed by the Department of Conservation under the Wildlife Act 1953; and
  - (b) an authorisation or a consent, or a waiver of the requirement for an authorisation or a consent, for recovery works under the Wildlife Act 1953—
    - (i) to take or kill any wildlife; or
    - (ii) to do anything in respect of any protected wildlife, or any land forming part of a wildlife sanctuary, to the extent it relates to the Government Railways Act 1949.
- (2) A copy of these conditions and any applicable management plans must be kept electronically or in hard copy on-site at all times that construction works are being undertaken.
- (3) The Agency must make contractors aware of the requirement to comply with these conditions, including through the implementation of the respective management plans.

## 2 Definitions

In this schedule,—

**construction works** means the works to be carried out as part of the project, excluding minor works and operational activities

**ecological principles** means the ecological principles set out in clause 5(2)

**minor works** means preliminary activities, including geotechnical investigations and establishment of mitigation measures, and minor upgrading and repair

**operational activities** means works associated with the ongoing operation and maintenance of the project following construction works

**project** means—

- (a) any activities in paragraph (b) that it is necessary or desirable to undertake because of or in connection with the severe weather events:
- (b) activities that are temporary and permanent activities for rail transport, requiring approvals under any of the enactments specified in clause 1.

### 3 Stakeholder and communications plan

The Agency must provide any stakeholder and communications plan prepared under Schedule 3 to the Department of Conservation as soon as practicable after it is finalised.

### 4 Affected area recovery liaison groups

The affected area recovery liaison groups set up under Schedules 2 and 3 also have the same functions in relation to recovery works undertaken under this schedule.

### 5 Ecology

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

#### *Ecological principles*

- (2) The following ecological principles must be used to guide the project design and construction (temporary and permanent works):
- (a) to avoid as far as practicable, and minimise,—
    - (i) permanent habitat loss (including in coastal, terrestrial, and freshwater habitats):
    - (ii) loss of naturally uncommon and highly depleted ecosystem types, significant indigenous vegetation, significant habitats of indigenous fauna, and habitats for at-risk or threatened species and taonga species:
    - (iii) habitat fragmentation or habitat barriers (including in coastal, terrestrial, and freshwater habitats):
    - (iv) impacts on habitat connectivity (including coastal, terrestrial, and freshwater habitats):
    - (v) impacts on at-risk or threatened species and taonga species:
    - (vi) adverse effects on water quality (including on kaimoana and mauri) from sediment:
    - (vii) to the extent practicable, alteration of natural hydrology patterns:
    - (viii) the potential for the spread or establishment, or both, of pest plants or animals (including in coastal, terrestrial, and freshwater habitats):
    - (ix) impacts on habitats that play an important role in the life cycle and ecology of native species:
  - (b) as far as practicable, to create safe habitats, especially for significant wildlife.

*Ecological scoping survey*

- (3) Before construction works begin, 1 or more suitably qualified and experienced ecologists must, together with any suitably qualified and experienced person nominated by the relevant iwi and hapū, complete an ecological scoping survey and a subsequent ecological effects assessment of the relevant construction works area, and adjacent areas, including to—
  - (a) identify any naturally uncommon ecosystems; and
  - (b) identify any at-risk or threatened species; and
  - (c) identify any taonga species (*see* guidance note at clause 6) that may be adversely affected during or as a result of construction works; and
  - (d) identify any protected wildlife; and
  - (e) determine whether kauri dieback disease or myrtle rust is present or possibly present.
- (4) The ecological scoping survey and subsequent ecological effects assessment must be carried out in general accordance with Appendix 1 of the National Policy Statement for Indigenous Biodiversity.
- (5) The Agency must provide a copy of the final ecological scoping survey and subsequent ecological effects assessment to each member of the affected area recovery liaison group as soon as practicable after completion.
- (6) For the purposes of this clause, **highly depleted** means less than 20% of indigenous cover remains in the land environment.

**6 Minimising ecological loss**

- (1) If any of the following are identified in the ecological scoping survey carried out under clause 5(3), the project ecologist, in association with the wider project team, must develop and implement measures to avoid, as far as practicable, or to minimise any potential adverse effects on those things, taking into account the ecological principles, including the preparation of ecological management plans, and wildlife management plans, if required:
  - (a) naturally uncommon ecosystems:
  - (b) at-risk or threatened species:
  - (c) taonga species:
  - (d) protected wildlife:
  - (e) kauri dieback disease:
  - (f) myrtle rust.
- (2) Any measures taken under subclause (1) must be—
  - (a) recorded by the Agency at regular intervals during the term of construction; and

- (b) reported by the Agency to the affected area recovery liaison group every 2 months together with any recommendations by the project ecologist, after consulting with the relevant Māori entities, to change those measures.

*Ecological management plans and wildlife management plans*

- (3) The Agency must, as directed by the Department of Conservation, submit any ecological management plans and wildlife management plans prepared under subclause (1) to that Department for certification 5 days before the commencement of construction works.
- (4) The Agency must provide a copy of any ecological management plans and wildlife management plans to the members of the affected area recovery liaison group.
- (5) The Agency must implement and comply with any ecological management plans and wildlife management plans for the duration of the construction works.
- (6) A wildlife management plan must include measures to ensure compliance with clauses 8 to 12 (General conditions), to the extent relevant.

*Habitat loss*

- (7) The Agency must keep a record of any habitat identified in the following documents that is lost as a result of the project:
  - (a) the ecological scoping survey carried out under clause 5(3):
  - (b) the subsequent ecological effects assessment carried out under clause 5(3):
  - (c) any ecological management plans prepared under subclause (1).

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**Guidance note**

The Agency should engage with the relevant Māori entities to identify taonga species that may be present in the project area.

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*General conditions*

**7 General conditions relating to wildlife**

- (1) The conditions in clauses 8 to 12 apply to all projects, in addition to any specific conditions in clauses 20 to 24 that apply.
- (2) The Agency must provide the Department of Conservation with a written summary of all construction works, no later than 2 months after the completion of those works.
- (3) The summary must include—
  - (a) a general description of the works undertaken:
  - (b) location of the works:

- (c) maps of the works:
- (d) designs of any structures erected in waterways.

## **8 Procedure for incidental discovery of significant wildlife**

- (1) The Agency must have a procedure for incidental discovery, including as part of indigenous woody vegetation management, of significant wildlife not identified in the ecological scoping survey or the ecological effects assessment.
- (2) The procedure for incidental discovery must include—
  - (a) immediately notifying the Department of Conservation of the discovery, and compliance with any advice given, or obligations imposed, by the Department; and
  - (b) appointment of a suitably qualified and experienced expert approved by the Department of Conservation to develop a management plan for the discovered species, if required by the Department;
  - (c) an application for authority or consent in respect of the species, if applicable.

## **9 Salvage, capture, handling, and relocation of native lizards and frogs, and at-risk or threatened invertebrates**

- (1) The Agency may only release a native lizard or frog, and an at-risk or threatened species of invertebrate, into a release site—
  - (a) of similar or better habitat than the source location, and capable of supporting that lizard, frog, or invertebrate; and
  - (b) that is within 500 m of the project footprint (or other release sites if approved by the Department of Conservation); and
  - (c) where the habitat for that lizard, frog, or invertebrate has been enhanced and approved by the Department of Conservation before relocation.
- (2) The Agency must ensure that salvage, capture, handling, and relocation of native lizards and frogs, and at-risk or threatened species of invertebrates, is undertaken in a manner and at a time determined to be appropriate by suitably qualified and experienced experts.
- (3) The Agency must ensure (except where the native lizard or frog, or at-risk or threatened species of invertebrate, is identified under the incidental discovery protocol) that the suitably qualified and experienced experts referred to in subclause (2) are at the on-site induction before construction work commences.

## **10 Salvage reporting for lizards, frogs, and invertebrates relocated under clause 9**

- (1) The Agency must submit, to the Department of Conservation each year for the duration of the project, a salvage report for any lizards, frogs, and invertebrates that are relocated under clause 9.

- (2) The salvage report must include—
  - (a) the species, and number of each species, of lizards, frogs, and invertebrates captured and released; and
  - (b) the GPS location, or a detailed map, or both, of the collection points and release points; and
  - (c) copies of any permits for those species; and
  - (d) results of all surveys and monitoring.
- (3) The Agency must send completed amphibian and reptile distribution system (ARDS) cards for all herpetofauna sightings and captures to the Department of Conservation, within 1 week of the sighting or capture.

#### **11 Injury and euthanasia of significant wildlife**

- (1) If any significant wildlife is injured in the course of the project, the Agency must take all reasonable steps to—
  - (a) immediately address the injury; and
  - (b) rehabilitate the wildlife, in consultation with the Department of Conservation.
- (2) The Agency must not euthanise an injured animal that is significant wildlife unless—
  - (a) a veterinarian recommends euthanasia on animal welfare grounds; or
  - (b) the Agency euthanises the animal under direction of the Department of Conservation.
- (3) Despite subclause (2), a bat may be euthanised only by a veterinarian.
- (4) The Agency must notify the Department of Conservation within 48 hours of euthanising significant wildlife.
- (5) The notification must include details of the species euthanised and the personnel involved in the euthanising.

#### **12 Death of protected wildlife during course of project**

If any protected wildlife is killed during the course of the project, the Agency must—

- (a) inform the Department of Conservation within 24 hours; and
- (b) comply with any requirements imposed by the Department, for example,—
  - (i) chilling the body if it can be delivered for necropsy within 72 hours;
  - (ii) freezing the body if delivery for necropsy will take longer than 72 hours;

- (iii) ceasing the project for a period agreed by the Department and the Agency, after reasonable discussions, but in any event not exceeding 3 months.

### **13 Indigenous woody vegetation management**

- (1) When indigenous woody vegetation is felled, the Agency must, as far as practicable, move the vegetation a minimal distance outside the proposed project footprint to a location of similar indigenous woody habitat.
- (2) Before mulching felled indigenous woody vegetation, the Agency must, as far as practicable, identify, catch, and remove any native lizards and frogs, and at-risk or threatened species of invertebrates, that are within the vegetation.

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#### **Guidance note**

The Agency may notify the Department of Conservation about incidental discovery of significant wildlife by calling 0800 DOC HOT.

The Agency must ensure that capture and handling methods (including North Island kiwi egg removal) follow those described in the inventory and monitoring toolbox at <http://www.doc.govt.nz/our-work/biodiversity-inventory-and-monitoring>

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#### *Concessions on certain lands*

### **14 Avoidance, remediation, or mitigation of adverse effects concessions**

- (1) The obligations in this clause apply in relation to any project associated with a concession on land to which the Conservation Act 1987, the Reserves Act 1977, or the Wildlife Act 1953 applies.
- (2) Any project associated with a concession for construction works on land to which the Conservation Act 1987, the Reserves Act 1977, or the Wildlife Act 1953 applies must be undertaken by the Agency so as to avoid, as far as practicable, and to remedy or mitigate, adverse effects on the values for which that land is held.

#### *Heritage and cultural impact assessment*

- (3) Before starting construction works, the Agency must appoint a suitably qualified and experienced heritage and cultural adviser to work with any heritage and cultural adviser nominated by the relevant Māori entity or entities to prepare a heritage and cultural impact assessment.
- (4) The heritage and cultural impact assessment must—
  - (a) identify any heritage sites or cultural values and potential impacts on them from the proposed construction works; and
  - (b) identify any taonga species that are present or likely to be present.
- (5) If any heritage sites or cultural values are identified in the heritage and cultural assessment, the heritage and cultural adviser must work with any person nominated by the relevant Māori entity or entities (other than a cultural or heritage adviser), and with the wider project team, to develop and implement measures

to avoid, as far as practicable, or minimise or remedy, any adverse effects to those sites or values.

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**Guidance note**

Nothing in these conditions permits the destruction or management of archaeological sites, historic objects and artefacts, and koiwi tangata (human bones), which requires authorisation under the Heritage New Zealand Pouhere Taonga Act 2014 and the Protected Objects Act 1975. If any discovery is made that requires notification or approval under that legislation, the Agency must also notify the Department of Conservation and the relevant Māori entity or entities.

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**15 Earthworks and construction management plan and site rehabilitation plan**

- (1) The clause applies to any projects associated with a concession to which the Conservation Act 1987, the Reserves Act 1977, or the Wildlife Act 1953 applies.
- (2) The Agency must develop an earthworks and construction management plan for the project that provides for the following outcomes:
  - (a) minimising the area of indigenous vegetation clearance and disturbance:
  - (b) minimising the area and volume of earthworks:
  - (c) maximising the effectiveness of erosion and sediment control measures:
  - (d) minimising the adverse effects on significant wildlife during the construction and operational phases, including light and noise:
  - (e) controlling, as far as practicable, and mitigating the adverse effects of any dust emissions:
  - (f) minimising the effects, and introduction, of weeds:
  - (g) biosecurity management that complies with clause 23.
- (3) The Agency must submit the draft earthworks and construction management plan to the Department of Conservation for certification before construction works begin and must comply with the certified earthworks and construction management plan.

*Site rehabilitation plan*

- (4) The Agency must develop a site rehabilitation plan that includes—
  - (a) ecologically appropriate vegetation cover and habitat; and
  - (b) pest and weed control; and
  - (c) other site-specific actions required to rehabilitate the site and its wildlife habitat.
- (5) The site rehabilitation plan may form part of the earthworks and construction management plan.

- (6) The Agency must submit the site rehabilitation plan to the Department of Conservation for certification before the completion of construction works and must comply with the certified site rehabilitation plan.

*Management plans for particular species*

**16 Frog management plan**

- (1) If the ecological scoping survey carried out under clause 5(3) identifies the presence or possible presence of native frogs within the project footprint, the Agency must appoint a suitably qualified and experienced herpetologist approved by the Department of Conservation to develop a frog management plan.
- (2) The frog management plan must include—
- (a) capture, handling, containment, and release techniques; and
  - (b) actions to prevent and mitigate frog habitat damage; and
  - (c) details for any frog salvage operation, which must include provision for—
    - (i) the approved herpetologist to be on site for any salvage operation; and
    - (ii) a frog survey and salvage relocation to be undertaken no earlier than 2 weeks before construction works begin; and
    - (iii) a second frog survey and salvage relocation the day before construction works begin; and
    - (iv) the use of drift or exclusion fences to deter frogs from re-entering the project footprint, if appropriate; and
    - (v) minimisation of trampling and disturbance of frogs and their habitat outside the project footprint by—
      - (A) using the same marked access routes for access to and from survey and release sites; and
      - (B) avoiding habitats that could easily be crushed or collapse (for example, stream seepages that could collapse if disturbed); and
      - (C) releasing frogs using a system that avoids the risk of released frogs being disturbed or trampled.

**Guidance note**

Agencies can access ARDS cards at: <https://www.doc.govt.nz/our-work/reptiles-and-frogs-distribution/atlas/species-sightings-and-data-management/report-a-sighting/>

**17 Lizard management plan**

- (1) If the ecological scoping survey carried out under clause 5(3) identifies the presence or possible presence of native lizards within the project footprint, the Agency must appoint a suitably qualified and experienced herpetologist approved by the Department of Conservation to develop a lizard management plan.
- (2) The lizard management plan must include—
  - (a) capture and handling techniques, including processes for—
    - (i) using live capture traps; and
    - (ii) sterilisation of instruments; and
    - (iii) temporary containment of lizards; and
  - (b) actions to prevent and mitigate lizard habitat damage; and
  - (c) details for any lizard salvage operation, including—
    - (i) the proposed relocation release site; and
    - (ii) management of the proposed relocation release site, including provisions for protection of relocated lizards; and
    - (iii) timing of relocation; and
    - (iv) how post-release monitoring will be undertaken; and
    - (v) actions to be followed if threatened lizard species are found within the project footprint; and
    - (vi) habitat enhancement; and
    - (vii) pest management.

**18 Bat management plan**

- (1) If the ecological scoping survey carried out under clause 5(3) identifies the presence or possible presence of bats or bat roost sites within the project footprint, the Agency must appoint a suitably qualified and experienced biologist approved by the Department of Conservation to develop a bat management plan.
- (2) The bat management plan must include—
  - (a) capture, handling, containment, and release techniques; and
  - (b) actions to prevent and mitigate bat habitat damage, including that—
    - (i) bat maternity roosts must not be felled; and
    - (ii) trees must be searched for bats before felling.

*Specific conditions for particular species***19 Specific conditions: native frogs**

- (1) This clause applies when the ecological scoping survey carried out under clause 5(3) identifies the presence or possible presence of native frogs.
- (2) The Agency must prevent the spread of chytrid fungus and other pathogens to, within, and between capture and release sites for native frogs.

*Destructive habitat searches*

- (3) Where vegetation is to be removed or the ground physically disturbed, the Agency must ensure that the vegetation or ground is searched by hand using destructive habitat searches to locate Hochstetter's frogs or Archey's frogs.
- (4) Any Archey's frogs that are located must be released within 24 hours of capture into suitable habitat at least 100 m outside the project footprint.
- (5) Any Hochstetter's frogs that are located must be released within 24 hours of capture into a suitable habitat in a nearby stream corridor that is unaffected by the project.

*Native frog injuries and euthanasia*

- (6) If any frogs are found injured during the project, the Agency must take all reasonable steps to immediately address the injury.
- (7) The Agency may euthanise an injured frog if that is recommended by the Department of Conservation-approved herpetologist or a veterinarian.

*Frog salvage reporting*

- (8) The Agency must submit a report to the Department of Conservation within 3 months after any frog salvage is completed.
- (9) The report must include—
  - (a) the Agency and a description and map of the location and project; and
  - (b) the relevant authorisation number; and
  - (c) a summary of all frog surveys and salvage operations, including frog survey and salvage methodologies; and
  - (d) the species and number of frogs observed, collected, and released; and
  - (e) the GPS location of the collection points and release points for each frog; and
  - (f) the results of all surveys, and salvage relocations, including date, weather conditions, search effort, frog age class (sub-adult, adult), and habitat type at capture and release points; and
  - (g) any difficulties encountered with capture and handling of frogs; and
  - (h) records of any frogs injured, euthanised, or killed.

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**Guidance note**

Frog capture and handling methods must follow those described in the Herpetofauna inventory and monitoring toolbox <http://www.doc.govt.nz/our-work/biodiversity-inventory-and-monitoring/herpetofauna/>

The spread of chytrid fungus and other pathogens may be avoided by following the Frog Hygiene Protocol.

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**20 Specific conditions: native lizards**

- (1) This clause applies when the ecological scoping survey carried out under clause 5(3) identifies the presence or possible presence of native lizards.

*Destructive habitat searches*

- (2) Where vegetation is to be removed or the ground physically disturbed as part of the project, the Agency must ensure that the vegetation or ground is searched for lizards by hand using destructive habitat searches.
- (3) Any lizard species identified in a destructive habitat search must be salvaged and relocated, in accordance with the lizard management plan, to similar habitat at least 100 m outside the project footprint.

*Lizard salvage reporting*

- (4) The Agency must submit a report on lizard salvage to the Department of Conservation each year during the project.
- (5) The lizard salvage report must include—
- (a) the authorisation number; and
  - (b) the species and number of any lizards captured alive and released; and
  - (c) the species and number of any lizards found dead; and
  - (d) results of all monitoring; and
  - (e) a description of how the lizard management plan was implemented, including—
    - (i) any difficulties encountered with capture of live lizards; and
    - (ii) post-release monitoring; and
    - (iii) details of any contingency actions undertaken.
- 

**Guidance note**

Capture and handling methods for lizards must follow those described in the Herpetofauna inventory and monitoring toolbox <http://www.doc.govt.nz/our-work/biodiversity-inventory-and-monitoring/herpetofauna/>

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**21 Specific conditions: bats**

- (1) This clause applies when the ecological scoping survey carried out under clause 5(3) identifies the presence or possible presence of bats.

*Vegetation felling*

- (2) Where vegetation is to be removed as part of the project, the Agency must ensure that all tree felling is undertaken in accordance with the tree felling protocol at doc-bat-roost-protocol-nz-Oct 2021.pdf.

*Bats found during course of project*

- (3) If bats are found during the course of the project, or if any bat is killed or injured during the course of the project, the Agency must—
- (a) immediately stop the construction works; and
  - (b) review the bat management plan in conjunction with the Department of Conservation and, before recommencing construction works, agree with the Department a process to prevent or minimise any further killing of or injury to bats; and
  - (c) take any injured bat to a veterinarian in accordance with subclause (4); and
  - (d) report any bat death or injury to the Department of Conservation within 48 hours.

*Injured bats*

- (4) The Agency must ensure that any injured bat is taken to a veterinarian approved by the Department of Conservation.
- (5) If the veterinarian determines that the bat is in a healthy condition, a chiropterologist approved by the Department of Conservation and appointed by the Agency may immediately release the bat.

*Bat release*

- (6) The Agency must ensure that when bats are released, they are released—
- (a) outside the project footprint; and
  - (b) into appropriate habitat (as determined by the chiropterologist) at least 1 hour after dusk and before midnight; and
  - (c) in approximate environmental conditions (little to no rain with temperatures above 12 degrees Celsius).

*Bat monitoring report*

- (7) The Agency must provide a report of all bat monitoring data to the Department of Conservation—
- (a) at the conclusion of the tree felling; and
  - (b) at any reasonable time during the tree felling, on request by the Department.

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**Guidance note**

The Agency must ensure that all tree felling in areas where bats have been identified as being present or likely to be present is undertaken in accordance with the approved tree felling protocol available at [doc-bat-roost-protocol-v2-oct-2021.pdf](#)

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**22 Specific conditions: certain birds**

- (1) This clause applies when the ecological scoping survey carried out under clause 5(3) identifies the presence or possible presence of kiwi or kōkako.

*Kiwi*

- (2) The Agency must ensure that all projects undertaken in areas where kiwi are present or possibly present are undertaken in accordance with the kiwi best practice manual available at <https://www.doc.govt.nz/globalassets/documents/science-and-technical/sap262entire.pdf>.
- (3) The Agency must ensure that kiwi are only captured using the assistance of a contracted and certified kiwi dog handler.

*Kōkako*

- (4) If nesting kōkako or kōkako nests are observed in the project area, the Agency must—
- immediately stop all construction works; and
  - immediately notify the Department of Conservation; and
  - resume construction works only when authorised to do so by the Department of Conservation.

**23 Specific conditions: biosecurity**

- (1) This clause applies when the ecological scoping survey carried out under clause 5(3) identifies the presence or possible presence of kauri dieback or myrtle rust.

*Kauri dieback*

- (2) The Agency must prevent the spread of the pest organism *Phytophthora taxon Agathis*, to the extent reasonably practicable.
- (3) The Agency must ensure that all vehicles and equipment, including clothing, are thoroughly cleaned of all visible soil and that footwear once cleaned is sprayed with SteriGENE solution before they enter, and when they move between, areas where there are kauri.

*Myrtle rust*

- (4) The Agency must prevent the spread of myrtle rust, to the extent reasonably practicable.
- (5) Before starting construction works, the Agency must appoint a suitably qualified and experienced expert to complete a scoping survey to identify—
- whether plants that can be affected by myrtle rust are present; and

- (b) whether any of those plants are affected by myrtle rust.
- (6) If plants that can be affected by myrtle rust are identified in the scoping survey, the Agency must ensure that all personnel on the project site are familiar with plants affected by myrtle rust and able to identify myrtle rust signs.
- (7) If plants that are affected by myrtle rust are identified in the scoping survey or during the project, the Agency must—
  - (a) contact MPI to report the discovery of myrtle rust, and comply with any requirements imposed by MPI; and
  - (b) immediately bag any clothing or materials that have come into contact with the affected plant or plants; and
  - (c) avoid any disturbance or handling of the affected plant or plants (including sample collection).

## Schedule 5

### Conditions for dispensations, exemptions, and approvals under Conservation Act 1987 and Freshwater Fisheries Regulations 1983

cls 31, 39

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#### 1 Authorised activities

The conditions in this schedule apply to—

- (a) an approval, an exemption, or a dispensation for recovery works under the Freshwater Fisheries Regulations 1983 that relates to the requirement to provide fish passage; and
- (b) an approval issued under this order for recovery works under the Conservation Act 1987 to transfer and release indigenous fish or other aquatic life.

#### 2 Definitions

In this schedule,—

**construction works** means the works to be carried out as part of the project, excluding minor works and operational activities

**ecological principles** means the ecological principles set out in clause 5(2)

**minor works** means preliminary activities, including geotechnical investigations and establishment of mitigation measures, and minor upgrading and repair

**National Fish Database** means the New Zealand Freshwater Fish Database (as provided by the National Institute of Water and Atmospheric Research Limited's Internet site)

**operational activities** means works associated with the ongoing operation and maintenance of the project following construction

**project** means any activities that—

- (a) it is necessary or desirable to undertake because of, or in connection with, the severe weather events; and
- (b) are temporary and permanent activities for rail transport requiring approvals under either of the enactments specified in clause 1.

### 3 Stakeholder and communications plan

The Agency must provide any stakeholder and communications plan prepared under Schedule 3 to the Department of Conservation as soon as practicable after it is finalised.

### 4 Affected area recovery liaison group

The affected area recovery liaison groups set up under Schedules 2 and 3 also have the same functions in relation to recovery works undertaken under this schedule.

### 5 Ecology

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

*Ecological principles*

- (2) The following ecological principles must be used to guide the project design and construction (temporary and permanent works):
  - (a) to avoid as far as practicable, and minimise,—
    - (i) permanent habitat loss (including in coastal, terrestrial, and freshwater habitats):
    - (ii) loss of naturally uncommon and highly depleted ecosystem types, significant indigenous vegetation, significant habitats of indigenous fauna, and habitats for at-risk or threatened species and taonga species:
    - (iii) habitat fragmentation or habitat barriers (including in coastal, terrestrial, and freshwater habitats):
    - (iv) impacts on habitat connectivity (including coastal, terrestrial, and freshwater habitats):
    - (v) impacts on at-risk or threatened species and taonga species:
    - (vi) adverse effects on water quality (including on kaimoana and mauri) from sediment:
    - (vii) to the extent practicable, alteration of natural hydrology patterns:

- (viii) the potential for the spread or establishment, or both, of pest plants or animals (including in coastal, terrestrial, and freshwater habitats):
- (ix) impacts on habitats that play an important role in the life cycle and ecology of native species:
- (b) as far as practicable, to create safe habitats, especially for at-risk or threatened species and taonga species:
- (c) to ensure, as far as practicable, that structures and works, including any dam or diversion structure in any natural river or stream, do not impede fish passage, and—
  - (i) appropriate fish passage is provided for the waterway and species that are, or are predicted to be, in the pathway or that are, or are predicted to be, in the catchment:
  - (ii) all structures meet the National Environmental Standards for Freshwater permitted activity standards or the minimum standards set out in the New Zealand Fish Passage Guidelines:
  - (iii) all structures are assessed using the Fish Passage Assessment Tool and remediated if the risk to fish passage is medium to very high:
  - (iv) changing climates and hydrology are considered to ensure that the structure provides appropriate fish passage in the long term.

*Ecological scoping survey*

- (3) Before construction works begin, 1 or more suitably qualified and experienced ecologists must, together with any suitably qualified and experienced person nominated by the relevant iwi and hapū, complete an ecological scoping survey and a subsequent ecological effects assessment of the relevant construction works area, and adjacent areas, including to—
  - (a) identify any naturally uncommon ecosystems; and
  - (b) identify any at-risk or threatened species; and
  - (c) identify any taonga species (*see* guidance note at clause 6) that may be adversely affected during or as a result of construction; and
  - (d) identify any protected wildlife; and
  - (e) determine whether kauri dieback disease or myrtle rust is present or possibly present.
- (4) The ecological scoping survey and ecological effects assessment must be prepared in accordance with the Freshwater Ecosystems geo-database, the New Zealand Freshwater Fish Database, the National Environmental Standards for Plantation Forestry (NES-PF) Fish Spawning Indicator, and criteria of Appendix 1 of the National Policy Statement for Indigenous Biodiversity as appropriate.

- (5) The Agency must provide a copy of the final ecological scoping survey and subsequent ecological effects assessment to each member of the affected area recovery liaison group as soon as practicable after completion.
- (6) Where recovery works will significantly lower the water level or otherwise adversely affect habitat for the duration of the construction works,—
  - (a) indigenous fish and aquatic life must be salvaged before works begin; and
  - (b) the fish and aquatic life must be returned as close as possible to the point of capture; and
  - (c) the release location should be in the same waterway and not divided by a fish barrier.
- (7) For the purposes of this clause, **highly depleted** means less than 20% of indigenous cover remains in the land environment.

## 6 Minimising ecological loss

- (1) If any of the following are identified in the ecological scoping survey carried out under clause 5(3), the project ecologist, in association with the wider project team, must develop and implement measures to avoid, as far as practicable, or to minimise any potential adverse effects on those things, taking into account the ecological principles, including the preparation of ecological management plans, and wildlife management plans, if required:
  - (a) naturally uncommon ecosystems:
  - (b) at-risk or threatened species:
  - (c) taonga species:
  - (d) protected wildlife:
  - (e) kauri dieback disease:
  - (f) myrtle rust.
- (2) Any measures taken under subclause (1) must be—
  - (a) recorded by the Agency at regular intervals during the term of construction; and
  - (b) reported by the Agency to the affected area recovery liaison group every 2 months together with any recommendations by the project ecologist, after consulting with the relevant Māori entities, to change those measures.

### *Ecological management plans and wildlife management plans*

- (3) The Agency must, as directed by the Department of Conservation, submit any ecological management plans and wildlife management plans prepared under subclause (1) to that Department for certification 5 days before the commencement of construction works.

- (4) The Agency must provide a copy of any ecological management plans and wildlife management plans to the members of the affected area recovery liaison group.
- (5) The Agency must implement and comply with any ecological management plans and wildlife management plans for the duration of the construction works.
- (6) A wildlife management plan must include measures to ensure compliance with clauses 8 to 12 (general conditions), to the extent relevant.

*Habitat loss*

- (7) The Agency must keep a record of any habitat identified in the following documents that is lost as a result of the project:
  - (a) the ecological scoping survey carried out under clause 5(3);
  - (b) the subsequent ecological effects assessment carried out under clause 5(3);
  - (c) any ecological management plans prepared under subclause (1).

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**Guidance note**

The Agency should engage with the relevant Māori entities to identify taonga species that may be present in the project area.

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**7 Transfer or release of fish and live aquatic life**

*Approval to transfer or release fish and live aquatic life*

- (1) The Agency may only transfer or release fish and live aquatic life that is taken in accordance with the exemption from regulation 21 of the Freshwater Fisheries Regulations 1983 or section 26ZHB(2) of the Conservation Act 1987.
- (2) Approval under this condition is limited to the release of live aquatic life within the same reach of the water body from which it is taken, where that lies within a conservation area, reserve, wildlife refuge or sanctuary, or covenant or kawenata area.
- (3) Any significant fish salvage operation must be planned in consultation with the Department of Conservation and other relevant regulators.

*Requirements for transfer or release of fish and live aquatic life*

- (4) The Agency must meet the following requirements for transfer or release of fish and live aquatic life:
  - (a) biosecurity risk assessments must be undertaken before and during transfer or release:
  - (b) where signs of sickness or disease are identified in a biosecurity risk assessment, or a biosecurity threat is considered too high,—
    - (i) fish and live aquatic life must not be transferred or released; and

- (ii) the Agency must notify the Ministry for Primary Industries (Biosecurity New Zealand):
  - (c) the Agency must take all reasonable steps to prevent the spread of pests and diseases during and after handling and movements of fish and live aquatic life:
  - (d) fish and live aquatic life—
    - (i) must be released into a suitable site within the same reach of the waterway as close as practicable to where they were taken; and
    - (ii) must not be moved to a different water body, or past any natural or artificial barrier to fish passage within the same water body:
  - (e) fish and live aquatic life held must—
    - (i) be released back to the wild within 120 hours (5 days) of capture; and
    - (ii) not be physically manipulated; and
    - (iii) not be mixed with species from a different location:
  - (f) the Agency must immediately notify the Ministry for Primary Industries (Biosecurity New Zealand) and the Department of Conservation of any disease outbreak or abnormality following the release of fish and live aquatic life:
  - (g) all equipment used during any transfer that comes into contact with water must be decontaminated before it is used at another site:
  - (h) the Agency must ensure that handling, holding, breeding, euthanasia, and transport of fish and live aquatic life within New Zealand meet the obligations set out in the Animal Welfare Act 1999 and the provisions of relevant codes of welfare under that Act, including the Code of Welfare: Transport within New Zealand:
  - (i) the Agency must provide a report on all transfers and releases of fish and live aquatic life to the Department of Conservation within 1 month of the transfer or release.
- (5) The report must include—
- (a) the number and size range of each species; and
  - (b) date and location (including GPS co-ordinates) of the release sites.

## **8 Disposal of moribund and dead fish and aquatic life and decontamination of water**

- (1) The Agency must ensure that distressed, diseased, moribund, or dead fish and aquatic life are disposed of using biosecure and humane methods, and that any water used to transport the fish and aquatic life is decontaminated.

*Inspection of project site by Department of Conservation*

- (2) The Agency must allow the Department of Conservation to inspect the project site for the purpose of monitoring fish and live aquatic life at any reasonable time.
- (3) If requested by the Department of Conservation, the Agency must provide, to the Department's satisfaction, evidence that the Agency is meeting these conditions.

Additional approvals will be required, including under the Fisheries Act 1996 and the Biosecurity Act 1993.

**Guidance note**

Additional approvals will be required, including under the Fisheries Act 1996 and the Biosecurity Act 1993.

The Agency may provide reports on the transfer and release of fish and live aquatic life to the Department of Conservation by emailing the report to [permissionshamilton@doc.govt.nz](mailto:permissionshamilton@doc.govt.nz)

Best-practice biosecurity protocols must be followed for each transfer to mitigate the risk of spreading pests and diseases during and after handling movements.

**9 Conditions for dispensation from providing fish passage**

The Agency must ensure that,—

- (a) when the construction works have been completed, fish passage is assessed and entered into the New Zealand Freshwater Fish Database using the fish passage assessment tool; and
- (b) within 6 months after the completion of the construction works, temporary structures that impede fish passage have been removed; and
- (c) the construction works that affected fish passage are completed during the term of this order.

**Guidance note**

The fish passage assessment tool is available at <https://niwa.co.nz/freshwater/management-tools/fish-passage-assessment-tool>

Comments should refer to "Cyclone Gabrielle emergency works".

**10 Engagement with Māori entities**

The Agency must engage with relevant Māori entities to ensure that, subject to the previous provisions of this order and best practice, tikanga is upheld and mātauranga followed in all steps relating to the transfer and release of fish and other live aquatic life.

## Schedule 6

### Form

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#### 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 [*state portfolio*] proposes to take under the Severe Weather Emergency Recovery (KiwiRail Holdings Limited) Order 2023 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 [*state portfolio*] considers it reasonably necessary to take your interest in the land for the following reasons: [*state reasons*].

#### Right to make submissions

- 5 You have a right to make written submissions to the Minister [*state portfolio*] concerning the taking of your interest in the land.
- 6 You must provide any written submissions you wish to make to the Minister not later than 10 working days after the date on which this notice is served on you.

#### Your right to compensation

- 7 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 [*state 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 [*state portfolio*])

Rachel Hayward,  
Clerk of the Executive Council.

## Explanatory note

*This note is not part of the order, but is intended to indicate its general effect.*

This order is made under section 7 of the Severe Weather Emergency Recovery Legislation Act 2023 (the **SWERLA**) and its effect is temporary. It comes into force on 6 October 2023 and is revoked on the close of 31 March 2028.

This order applies in relation to affected rail routes (as defined in *clause 4*). It modifies the following legislation so that KiwiRail Holdings Limited (the **Agency**) is able to effectively carry out recovery work (as defined in *clause 4*):

- Resource Management Act 1991 (the **RMA**):
- Public Works Act 1981 (the **Public Works Act**):
- Conservation Act 1987 (the **Conservation Act**):
- Reserves Act 1977 (the **Reserves Act**):
- Freshwater Fisheries Regulations 1983 (the **Freshwater Fisheries Regulations**):
- Wildlife Act 1953 (the **Wildlife Act**):
- Railways Act 2005 (the **Railways Act**):
- New Zealand Railways Corporation Act 1981 (the **New Zealand Railways Corporation Act**).

### *Part 1*

*Part 1* modifies the RMA in relation to controlled activities, resource consents for recovery work, land that is reclaimed for recovery work, permitted activities, outline plans, and notices of requirements.

This Part—

- classes certain recovery work done by or on behalf of KiwiRail Holdings Limited (the **Agency**) as a controlled activity, meaning that a resource consent is required for that work (*see clause 6*):
- specifies the conditions that may be imposed on a resource consent for recovery work (*see clause 6*):
- specifies the information that an application for a resource consent for recovery work must include (*see clause 7*):
- specifies how an application for a resource consent for recovery work is to be determined (*see clause 8*):
- requires a consent authority to notify certain people of an application for a resource consent for recovery work and invite them to provide written comments on it (*see clause 9*):

- enables a consent authority, in relation to a resource consent for recovery work, to notify the Agency of any recommended amendments to the resource consent conditions set out in *Schedules 2 and 3* and any additional recommended conditions and the Agency, in turn, to notify the consent authority which of the recommended amendments and additional conditions it accepts and which ones it rejects and why (*see clause 10*):
- requires a consent authority, before making a decision on an application for a resource consent for recovery work, to consider, and prepare and publish a summary of, the written comments received on the application (*see clause 11*):
- sets out a truncated procedure that may be used to determine an application for a resource consent for recovery work, if the application is made by the Agency on or before 30 April 2024 (this procedure is the same as the procedure set out in *clauses 8 to 11*, except that it does not require the consenting authority to notify anyone of, or invite anyone to comment on, an application) (*see clauses 12 and 13*):
- specifies how an application for a resource consent for recovery work that is undertaken as emergency work must be made and determined (*see clause 14*):
- modifies certain provisions of the RMA in relation to land that is intended to be reclaimed for recovery work (*see clause 15*):
- classes the operation of a temporary depot or storage facility or parking area situated on a specified location as a permitted activity in certain circumstances (*see clause 16*):
- enables recovery work to be carried out by or on behalf of the Agency in accordance with any of its designations without an outline plan (*see clause 17*):
- allows a requiring authority that holds a designation to temporarily transfer to the Agency its rights and responsibilities in relation to all or part of the designation (*see clause 18*):
- requires the Agency and a territorial authority to do certain things in relation to a notice of requirement to alter the boundaries of a designation due to recovery work (*see clause 19*):
- enables 2 or more resource consents for the same recovery work to be amalgamated (*see clause 20*).

## Part 2

*Part 2* modifies the Public Works Act in relation to the compulsory acquisition of land that, in the opinion of the Minister for State Owned Enterprises, it is reasonably necessary for the Crown to compulsorily acquire or take in order for the Agency to undertake recovery work.

This Part—

- specifies how the Minister for State Owned Enterprises may notify an intention to acquire or take land (*see clause 25*):

- specifies how land may be taken (*see clauses 26 and 27*):
- makes other modifications to the Public Works Act in relation land (*see clauses 23, 24, and 28*).

### Part 3

*Part 3* modifies the Conservation Act and the Reserves Act in relation to concessions for recovery work in a conservation area or Crown reserve and the transfer or release of live aquatic life.

This Part—

- specifies the provisions of the Conservation Act and the Reserves Act that do not apply in relation to the following (*see clause 30*):
  - a concession, applied for under section 17R(1) of the Conservation Act, for the purpose of carrying out recovery work; or
  - a concession, applied for under section 59A of the Reserves Act, for the purpose of carrying out recovery work in relation to a Crown reserve; or
  - the relevant recovery work:
- requires the Agency to include, in an application for a concession, a report on the consultation undertaken in relation to the proposed recovery work (*see clause 30(4)*):
- specifies the grounds on which the Minister of Conservation may decline to grant a concession (*see clause 30(7)*):
- limits the conditions that the Minister of Conservation may impose on a concession (the Minister may only impose on the approval the conditions set out in *Schedule 4*) (*see clause 30(8)*):
- specifies the provisions of the Conservation Act that do not apply in relation to an application made by the Agency for an approval to transfer or release live aquatic life for the purpose of carrying out recovery work (*see clause 31*):
- requires the Agency, when applying for an approval, to provide the information set out in *clause 31(4)*:
- specifies the grounds on which the Minister of Conservation may decline to grant a concession (*see clause 31(7)*):
- limits the conditions that the Minister of Conservation may impose on a concession (the Minister may only impose on the approval the conditions set out in *Schedule 5*) (*see clause 31(8)*):
- makes other modifications to the Conservation Act and the Reserves Act in relation to concessions for recovery work and approvals for the transfer or release of live aquatic life for the purposes of carrying out recovery work (*see clauses 30 and 31*).

#### *Part 4*

*Part 4* modifies the Reserves Act in relation to local authority reserves.

This Part—

- enables a local authority to authorise the Agency to temporarily occupy and use a local authority reserve for certain purposes (*see clause 34*):
- requires the Agency, if authorised by a local authority under *clause 34* to occupy and use a reserve, to comply with any conditions that the local authority has imposed on the authorisation (*see clause 35(2)*):
- enables the Minister of Conservation, if the local authority reserve is vested in the Crown, to direct a local authority to refuse, or revoke, an authorisation or direct the Agency not to do, or to cease doing, any of the things that it has been authorised under *clause 34(1)* to do (*see clause 36*).

#### *Part 5*

*Part 5* modifies the Freshwater Fisheries Regulations in relation to the restriction on taking fish from or near fish traps and approvals, exemptions, and dispensations relating to freshwater fisheries.

This Part—

- exempts the Agency, when carrying out recovery work, from the restriction on taking fish from or near a fish trap (*see clause 38*):
- specifies the regulations that do not apply to—
  - an application made by the Agency under regulation 42(1) or (2), 43(2), or 44(1) for an approval, an exemption, or a dispensation for the purposes of carrying out recovery work:
  - any approval, exemption, or dispensation granted to the Agency under those regulations; or
  - the relevant recovery work (*see clause 39*):
- specifies the information that the Agency must include in an application for an approval, an exemption, or a dispensation (*see clause 39(4)*):
- allows the Director-General or the Minister of Conservation to reduce the information requirements for an application for an approval, an exemption, or a dispensation (*see clause 39(4)*):
- requires the Agency to include, in an application for an approval, an exemption, or a dispensation, a report on the consultation undertaken in relation to the proposed recovery work (*see clause 39(5)*):
- specifies the grounds on which the Director-General may decline to grant an approval, an exemption, or a dispensation (*see clause 39(8)*):
- limits the conditions that the Director-General may impose on an approval, an exemption, or a dispensation to those set out in *Schedule 5* that are relevant to fish (*see clause 39(9)*):

- makes other modifications to the regulations in relation to approvals, exemptions, and dispensations for the purposes of carrying out recovery work (*see clause 39*).

### *Part 6*

*Part 6* modifies the Wildlife Act and the Conservation Act in relation to concessions for recovery work in certain wildlife sanctuaries, wildlife refuges, and wildlife management reserves and the Wildlife Act in relation to the taking or killing of any wildlife or the carrying out of any other activity in respect of protected wildlife.

This Part—

- specifies the provisions of the Wildlife Act and the Conservation Act that do not apply in relation to—
  - a concession granted to the Agency for the purposes of carrying out recovery work in a wildlife sanctuary, wildlife refuge, or wildlife management reserve vested in the Crown and managed by the Department of Conservation; or
  - the relevant recovery work (*see clause 42*):
- requires the Agency to include, in an application for a concession, a report on the consultation undertaken in relation to the proposed recovery work (*see clause 42(5)*):
- specifies the grounds on which the Minister of Conservation may decline to grant a concession (*see clause 42(8)*):
- limits the conditions that the Minister may impose on a concession to those set out in *Schedule 4* (*see clause 42(9)*):
- specifies the circumstances in which the requirement for the Agency to gain authority under section 53 of the Wildlife Act, or consent under section 71 of that Act, to take or kill wildlife or do anything in respect of protected wildlife (the **requirement**) is waived (*see clause 43*):
- specifies the provisions of the Wildlife Act that do not apply to a waiver of the requirement or the activity covered by the waiver (*see clause 43(4)*):
- sets out the procedural requirements that must be met before the requirement can be waived (*see clause 44*):
- specifies the provisions of the Wildlife Act that do not apply in relation to an application made by the Agency for authority under section 53 of that Act, or consent under section 71 of that Act, to take or kill any wildlife, or carry out any activity that may be authorised under that section in respect of protected wildlife, in the course of carrying out recovery work within a certain distance of a section of railway land that is listed in *Schedule 1* (*see clause 45*):
- specifies the provisions of the Wildlife Act that do not apply to—
  - an authority or a consent granted to the Agency under section 53 or 71 of the Wildlife Act to take or kill any wildlife in the course of carrying out

recovery work within a certain distance of a section of railway land that is listed in *Schedule 1*; or

- any activity covered by the authority or consent (*see clause 45*):
- specifies the information that the Agency must include in an application for an authority or a consent (*see clause 45(5)*):
- allows the Director-General or Minister of Conservation to reduce the information requirements for an application for an authority or a consent on a case-by-case basis (*see clause 45(5)*):
- requires the Agency to include, in an application for an authority or a consent, a report on the consultation undertaken in relation to the proposed recovery work (*see clause 45(6)*):
- specifies the grounds on which the Director-General or Minister of Conservation may decline to grant a concession (*see clause 45(8)*):
- limits the conditions that the Director-General or Minister of Conservation may impose on a concession to the conditions set out in *Schedule 4* that apply to wildlife (*see clause 45(9)*):
- makes other modifications to the Wildlife Act in relation to concessions for recovery work, waivers of the requirement, and authorities and consents to take or kill wildlife in the course of carrying out recovery work (*see clauses 42, 43, 45, and 46*).

### *Part 7*

In *Part 7*, *clauses 48 to 50* modify sections 76, 77, 78, and 86(1) of the Railways Act to provide workable provisions for access to land and more timely compliance with notices in the context of recovery work.

*Clauses 51 to 53* modify sections 14, 31, and 48(e) of the New Zealand Railways Corporation Act for similar purposes.

### *Schedules*

*Schedule 1* sets out descriptions of affected sections of rail routes.

*Schedule 2* specifies resource consent conditions.

*Schedule 3* specifies designation and consent conditions.

*Schedule 4* specifies conditions for waivers, concessions, authorities, and consents under the Conservation Act, the Reserves Act, and the Wildlife Act.

*Schedule 5* sets out conditions for dispensations, exemptions, and approvals under the Conservation Act and the Freshwater Fisheries Regulations.

*Schedule 6* sets out the form for a notice of intention to take land.

### Statement of reasons

*This statement of the Minister's reasons for recommending the making of this order is published in accordance with section 10 of the Severe Weather Emergency Recovery Legislation Act 2023.*

The relevant Minister is the Minister responsible for the administration of this order and the Ministers responsible for the legislation the provisions of which it 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 by *Part 1*):
- the Minister for Land Information (as the Minister responsible for the administration of the Act modified by *Part 2*):
- the Minister of Conservation (as the Minister responsible for the administration of the legislation modified by *Parts 3, 4, 5, and 6*):
- the Minister of Transport (as the Minister responsible for the administration of this order and the Act modified by *Part 7, clauses 48 to 50*):
- the Minister of Finance (as the Minister responsible for the administration of the Act modified by *Part 7, clauses 51 to 53*).

The relevant Minister is satisfied that this order—

- is necessary or desirable for 1 or more purposes of the SWERLA:
- is no broader than is reasonably necessary to address the matters that gave rise to the order:
- does not breach section 11 of the SWERLA:
- does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990.

### **Order is necessary or desirable for 1 or more purposes of SWERLA and is appropriate**

The relevant Minister is satisfied, for the following reasons, that the order is—

- necessary or desirable for 1 or more purposes of the SWERLA; and
- appropriate.

### **Modifications to RMA**

This order makes the following modifications to the RMA:

*Clauses 6 and 7* provide that any recovery work that is done by or on behalf of the Agency that is not a permitted activity for the purposes of the RMA is a controlled activity for the purposes of the RMA.

Applications for a resource consent for recovery work are governed by—

- *clause 12*, if the Agency chooses to make an application under that clause. The *clause 12* process can only be used in the case of applications made on or before 30 April 2024; or
- *clauses 7 to 11* in any other case. However the *clause 7 to 11* process can only be used for applications made on or before 31 March 2028, when this order is revoked.

*Applications under clauses 7 to 11 (made after 30 April 2024)*

For an application for a resource consent for recovery work made under *clauses 7 to 11*,—

- the consent authority's power to impose conditions under *clause 10* is restricted to—
  - the conditions set out in *Schedules 2 and 3* of this order that relate to the recovery work, as modified by any amendments to those conditions recommended by the consent authority that are accepted and notified to the consent authority by the Agency; and
  - any additional conditions recommended by the consent authority that are accepted by the Agency and are within the scope of the matters listed in *clause 6(4)*:
- the consent authority must notify its decision on the application within 30 working days after the application is lodged (*clause 8(2)(v)*):
- the Agency 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 application must not be publicly notified or given limited notification (*clause 8*). Instead, the consultation process in *clause 9* applies.

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

A 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 (*clause 8(2)(b)(ii)*).

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 (*clause 8(2)(b)(ii)*):
- 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(2)(b)(iii)*).

Within 5 working days after a resource consent application for recovery work is lodged, the consent authority must invite written comments from specified persons, who will have 10 working days to make comments (*clause 9(1)*). 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(3) and (4)*).

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 11*).

### **Conditions on resource consent**

Under *clause 13*, a consent authority may impose conditions on a resource consent, as well as imposing additional conditions to those set out in *Schedules 2 and 3*, through the following process:

- the consent authority may recommend amendments to those conditions or recommend new conditions, and the Agency can accept or reject the recommendations:
- if the Agency rejects a recommended amendment, it may identify an alternative amendment and the conditions, as then amended, apply to the consent:
- the consent authority must notify its decision on the application within 7 working days.

### **Applications for alterations to designations**

The Agency may choose to make an application to alter the boundaries of a designation using the process in *clause 19*. That clause allows agencies to give notice to the consenting authority of the alteration if it is reasonably necessary in relation to recovery works, and comments are invited from directly affected landowners and relevant iwi and hapū.

*Clause 19* applies if the Agency gives a notice of requirement to alter the boundaries of a designation to a territorial authority, and the alteration is necessary for recovery work. In that case, the territorial authority must alter the boundaries of the designation accordingly and impose the conditions set out in 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 by a more limited consultation process).

Under the normal RMA process for an alteration to 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 decides whether to accept or reject the recommendation, in whole or in part (section 172 of the RMA).

### **Conditions on alterations to designations**

The territorial authority must make any necessary changes to the district plan to alter the designation to impose the conditions set out in *Schedule 3* on that part of the designation that has been altered (*clause 19(6)*).

**Other modifications to RMA**

*Clause 14* applies to recovery works that are done as emergency works under sections 330 to 330C 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 from the date on which this order commences.

For land that is reclaimed as a consequence of recovery 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 15*).

*Clause 16* 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 recovery works or to any other activity necessary or desirable to rebuild any rail corridor under the control of KiwiRail;
- 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 severe weather events.

If the Agency intends to undertake recovery works on designated land, it is not required to submit an outline plan of work to the territorial authority (*clause 17*).

**Relevant Minister's reasons**

The relevant Minister considers that these modifications to the RMA are necessary or desirable for the purposes of the SWERLA to facilitate the reopening of the rail corridors as soon as practicable.

In relation to *clauses 5 to 20* of this order,—

- it will not be possible for the Agency to secure all necessary resource consents in the required time frames if the status of recovery works remains as that set under the applicable plans and national environmental standards. To require the Agency to secure resource consents for recovery works using the normal RMA processes would significantly delay its ability to start the work, and would involve an unacceptable risk that some consent applications may be declined or subject to appeal (with resulting delays);
- the range of activities described in *clause 4* of this order that are deemed to be controlled activities needs to be broad, given the varied array of works that are necessary to restore the rail corridors 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 for consideration in decision making in the order (*clause 8*) because any matters of control in the relevant RMA planning documents will not be applicable to the deemed controlled activities. The matters for decision making have been developed to include all key potential cultural and environmental effects of the recovery work.

In relation to *clause 7*, it is necessary to exempt the Agency from meeting the application requirements in section 88(2) and Schedule 4 of the RMA because it will not be possible for the Agency to prepare an application that complies with section 88(2) and ensure that recovery works can start without undue delay due to the scale of the recovery works 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 Agency 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 notification, public submissions, and hearings) would prevent consents from being obtained in the required time frame:
- given that this order alters to controlled the activity status of most activities needing consent, there are likely to be a number of areas where the consents sought would be provided for through a myriad rules across the frameworks, with a variety of consent rules being triggered, and information required to support applications and assessments being required for decision making. 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 8*:
- it is necessary to deem compliance with section 107(2) of the RMA, because although recovery works should qualify as exceptional circumstances in terms of section 107(2)(a) of the RMA, section 107 otherwise imposes a jurisdictional barrier to the granting of consent.

To address the limits on public participation following on from the suspension of public and limited notification, *clauses 9, 10, and 11* introduce an alternative consultation process in relation to applying this order, drawing from the process in section 9 of the SWERLA for the development of orders. This includes mandating the requirement for engagement with iwi. The time frames in *clauses 9, 10, and 11* are necessarily short, in order to ensure that there is no undue delay to the commencement of recovery work.

In relation to *clause 10*,—

- given the pressing need to commence recovery works to ensure that social and economic recovery starts to occur as soon as possible, the Agency requires 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 1* of this order, especially in Tairāwhiti and Hawke's Bay, it will be difficult for consent authorities to develop comprehensive RMA conditions to apply to the recovery works while at the same time ensuring that the conditions are capable of being complied with and will not unduly hinder the necessary recovery work:
- to address that difficulty while also ensuring that environmental effects are appropriately avoided, remedied, or mitigated, a set of comprehensive conditions has been developed. Those conditions are set out in *Schedules 2 and 3*. 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 recovery work, in a way that will not unduly or inappropriately hinder the work while still ensuring that best practice in environmental management occurs:
- it is necessary for the Agency to retain approval rights over any changes to the conditions in *Schedules 2 and 3* given that the Agency will have the most up-to-date knowledge of the practical conditions and logistical and resource constraints associated with restoring the rail corridors:
- it is necessary to give the Agency the ability to specify alternative amendments to the conditions in *Schedules 2 and 3*, to ensure that the Agency can make consequential changes. The requirement that any alternative amendments cannot be less onerous than the conditions in *Schedule 2* provides an environmental safeguard.

The obligations in *clause 14* will apply only in the period before the Agency obtains consents for rail corridor recovery work, because after obtaining appropriate consents it is not necessary to rely on section 330 of the RMA. The additional obligations on the Agency in *clause 7* are intended to ensure that emergency works for the purpose of the rail corridor rebuild are conducted in a way that is sensitive to the receiving environment in the period before conditions of consent apply.

The modifications in *clause 15* are necessary to allow the Agency to apply for consents to carry out works on land that will be reclaimed as part of the recovery work, before 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 severely delay recovery works if the Agency could not obtain resource consents for, or alter designations to cover, new land that is to be reclaimed from the coastal marine area.

In relation to *clause 16*,—

- the deemed permitted activity statuses are necessary because of the scale of the resources required for the recovery works in the affected areas:

- it is necessary to extend permitted activity status for temporary depots and storage facilities incidental to works by the Agency beyond the recovery of the rail corridors because—
  - in practice, it will be very difficult (and inefficient) for the Agency to restrict the use of temporary depots and storage facilities solely to repair works related to the rail corridors. The Agency will also need to use those temporary facilities to enable other rail repair works in the districts; and
  - during the period until the rail corridors are reopened, it is vital that alternative transport routes affected by the recent severe weather events 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 Agency, such as milk tankers) if those vehicles are held up as a result of disruption to the land transport system because of the severe weather events.

In relation to *clause 17*, it is necessary to waive the requirement in section 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 recovery work. Again, this is necessary to ensure that the recovery works can commence without undue delay.

In relation to *clause 18*,—

- the normal process for altering designations for the rail corridors is modified to avoid unacceptable delays to the recovery work;
- the conditions that apply to alterations set out in *Schedule 3* 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 19* will allow for input by affected stakeholders.

### **Order not broader than reasonably necessary**

The relevant Minister is satisfied that this aspect of the order is not broader than reasonably necessary as the modifications are geographically limited to sections of the rail routes affected by a severe weather event (as specified in *Schedule 1*) together with all land, infrastructure, and other property adjacent to or associated with those sections. The modifications also apply only to recovery work. The definition of recovery work in *clause 4* is limited to the restoration of the function of a section of rail route that is affected by a severe weather event, including repair and rebuild activities, safety enhancements, and resilience improvements.

### Consideration of effects on environment

Section 8(1)(e) of the SWERLA 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,—

- this order sets up processes for resource consents and alterations to designations. Each process has in-built environmental checks and balances, including—
  - the requirement for any resource consent application to include a high-level consideration of the potential effects:
  - the obligation for the Agency to engage with certain parties to gain an understanding of the impacts of the proposed works on those parties and to appropriately respond through design, construction, or condition changes:
  - resource consent conditions that will avoid, remedy, or mitigate any adverse effects:
- in relation to applications under *clause 7*, the consent conditions listed in *Schedules 2 and 3* are intended to avoid, remedy, or mitigate adverse effects of the recovery work. All consents under this process will have conditions requiring a construction environmental management plan, the involvement of a recovery liaison group (with representation from the consent authority, relevant local authorities, Heritage New Zealand Pouhere Taonga, the Department of Conservation, and relevant iwi and hapū) to help inform the design, management, and monitoring of all construction work, and the involvement of a kaitiaki adviser to advise on cultural values and effects, as well as effects on the physical environment. These consent conditions reflect consent conditions for similar infrastructure works:
- in relation to conditions under *clauses 10, 12, and 13*, the process will enable councils to put additional resource consent conditions on consents, in accordance with the matters specified in *clause 6(4)*. That list includes all of the key environmental considerations appropriate to infrastructure activities. Environmental effects will be mitigated through those conditions. The process will enable specified parties to make comments and therefore will enable more informed consideration of the range of environmental effects in decisions. The process allows the Agency to determine whether changes to conditions recommended by the local authority are accepted or rejected. In the event of rejection, alternative wording is required. However, conditions are still required to appropriately mitigate environmental effects:
- in relation to emergency works, given the significant extent of emergency works that will be undertaken, *clause 14* adds additional requirements to consider, avoid, remedy, or mitigate, and monitor the environmental effects

as far as practicable. Those controls add an additional layer of environmental protection, over and above what is currently provided in the emergency works provisions (sections 330 to 330C of the RMA):

- in relation to deeming temporary depots and storage facilities to be permitted activities, the order enables the relevant territorial authority to impose requirements on noise control, and to avoid, remedy, and mitigate other environmental effects:
- in relation to alterations to designations, the conditions for the designations include that before starting construction works a stakeholder and communications plan is required, and a recovery works liaison group (with representation from the requiring authority, relevant local authorities, Heritage New Zealand Pouhere Taonga, the Department of Conservation, and relevant iwi and hapū) is to be established to help inform the design, management, and monitoring of all construction works. They also require an ecological scoping survey to be undertaken and measures to be developed to minimise adverse effects. The specified conditions reflect similar infrastructure construction designation conditions.

### **Modifications to Conservation Act**

*Clause 30* provides that if the Agency applies under section 17R(1) of the Conservation Act for a concession to carry out recovery works in a conservation area (or under section 59A of the Reserves Act for a concession to carry out recovery works in a reserve vested in the Crown) the Minister of Conservation must issue a decision on the application within 20 working days after the date on which it was received, and, if granting it, must impose the conditions set out in *Schedule 4*. The grounds on which the Minister may decline the application are set out in *clause 30(7)*.

*Clause 31* provides that if the Agency applies under section 26ZM of the Conservation Act for an approval to transfer or release live aquatic life for the purpose of carrying out recovery works, the Minister of Conservation must issue a decision on the application within 20 working days after the date on which it was received, and, if granting it, must impose the conditions set out in *Schedule 4*. The grounds on which the Minister may decline the application are set out in *clause 31(7)*.

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

The relevant Minister considers this aspect of the order is necessary or desirable for the purpose of the SWERLA, because—

- it may be impracticable to completely avoid carrying out recovery works within conservation areas because of the nature of the surrounding environment:
- applying through the usual Conservation Act processes and time frames could unduly delay recovery works:
- the conditions in *Schedule 4* have been developed to appropriately manage adverse effects on conservation areas and are, as far as practicable, consistent

with the resource consent and designation conditions set out in *Schedules 2 and 3*:

- an application under the order may be declined if conditions in *Schedule 4* would not be sufficient to avoid more than minimal adverse effects on a naturally uncommon ecosystem, an at risk or a threatened species other than a species categorised as at risk and recovering, relict, or naturally uncommon, or a taonga species or would not be sufficient to avoid severe adverse effects on protected wildlife:
- the conditions in *Schedule 5* have been developed to manage the risks of transferring freshwater fish and aquatic life and are as far as practicable consistent with the resource consent and designation conditions set out in *Schedules 2 and 3*.

### **Order not broader than reasonably necessary**

The relevant Minister is satisfied that this aspect of the order is not broader than reasonably necessary as the modifications are geographically limited to sections of rail routes affected by a severe weather event (as specified in *Schedule 1*) together with all land, infrastructure, and other property adjacent to or associated with those sections. The modifications also apply only to recovery work. The definition of recovery work in *clause 4* is limited to the restoration of the function of a section of rail route that is affected by a severe weather event, including repair and rebuild activities, safety enhancements, and resilience improvements.

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

*Clauses 38 and 39* modify the provisions of the Freshwater Fisheries Regulations 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 recovery works carried out by the Agency:
- regulations 42, 43, and 44 are modified by providing that if the Agency applies for a dispensation for the purpose of carrying out recovery works, the Director-General of Conservation must issue a decision on the application within 20 working days after the date on which it was received, and, if granting it, impose the conditions set out in *Schedule 5*. The grounds on which the Director-General may decline the application are set out in *clause 39(8)*:
- regulation 45 does not apply to the recovery works 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:
- regulation 48 does not apply to the recovery works because it may be necessary to make a structural alteration in a fish facility in the course of carrying out recovery works.

**Relevant Minister's reasons**

The relevant Minister considers this aspect of the orders is necessary or desirable for the purpose of the SWERLA, because—

- it may not be practicable for recovery works to completely avoid effects on freshwater fisheries because of the nature of the surrounding environment:
- applying through the usual Freshwater Fisheries Regulations process and time frames could unduly delay recovery work:
- an application may be declined if conditions in *Schedule 4* are not sufficient to avoid more than minimal adverse effects on a naturally uncommon ecosystem, an at risk or a threatened species other than a species categorised as at risk and recovering, relict, or naturally uncommon, or a taonga species or would not be sufficient to avoid adverse effects on protected wildlife.

**Order not broader than reasonably necessary**

The relevant Minister is satisfied that this aspect of the order is not broader than reasonably necessary as the modifications are geographically limited to sections of rail routes affected by a severe weather event (as specified in *Schedule 1*) together with all land, infrastructure, and other property adjacent to or associated with those sections. The modifications also apply only to recovery work. The definition of recovery work in *clause 4* is limited to the restoration of the function of a section of rail route that is affected by a severe weather event, including repair and rebuild activities, safety enhancements, and resilience improvements.

**Modifications to Wildlife Act**

*Clause 42* provides that if the Agency applies under section 14AA of the Wildlife Act for a concession to carry out recovery works in a wildlife sanctuary, wildlife refuge, or wildlife management reserve vested in the Crown and managed by the Department of Conservation, the Minister of Conservation must issue a decision on the concession within 20 working days after the date the application was received and, if granting it, impose the conditions set out in *Schedule 4*. The grounds on which the Minister may decline the application are set out in *clause 42(8)*.

*Clause 45* modifies the Wildlife Act by providing that if the Agency applies for authority under section 53 or consent under section 71 of that Act to take or kill any wildlife, or do anything in respect of protected wildlife, in the course of recovery work, the Minister or Director-General of Conservation must issue a decision on the application within 20 working days after the date on which the application was received, and if granted, impose the conditions set out in *Schedule 4*. The grounds on which the Minister or Director-General may decline the application are set out in *clause 45(8)*.

**Relevant Minister's reasons**

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

- it may not be practicable for the recovery works to completely avoid impacts on wildlife protected under the Wildlife Act because of the nature of the surrounding environment:
- applying through the usual Wildlife Act processes and time frames could unduly delay recovery works:
- the conditions attached in *Schedule 4* have been developed to appropriately manage any adverse effects on protected wildlife and are as far as practicable consistent with the resource consent and designation conditions set out in *Schedules 2 and 3*:
- an application may be declined if conditions in *Schedule 4* would not be sufficient to avoid more than minimal adverse effects on a naturally uncommon ecosystem, an at risk or a threatened species other than a species categorised as at risk and recovering, relict, or naturally uncommon, a taonga species, or protected wildlife.

**Order not broader than reasonably necessary**

The relevant Minister is satisfied that this aspect of the order is not broader than reasonably necessary as the modifications are geographically limited to sections of rail routes affected by a severe weather event (as specified in *Schedule 1*) together with all land, infrastructure, and other property adjacent to or associated with those sections. The modifications also apply only to recovery work. The definition of recovery work in *clause 4* is limited to the restoration of the function of a section of rail route that is affected by a severe weather event, including repair and rebuild activities, safety enhancements, and resilience improvements.

**Modifications to Reserves Act**

*Part 4* of the order allows local authorities to authorise the Agency to temporarily occupy and use council reserves for recovery purposes that do not comply with the requirements of the Reserves Act for that reserve, subject to any conditions that the local authority considers appropriate.

A local authority reserve for the purposes of this order is defined in *clause 4* as a reserve or a public reserve (as those terms are defined in section 2(1) of the Reserves Act) that is owned, administered, managed, or controlled by the local authority.

*Clause 34(1)* sets out the actions that the Agency may take in relation to a reserve. The actions are—

- undertaking recovery works anywhere in the reserve:
- operating a parking area for heavy motor vehicles anywhere in the reserve:
- restricting any person's access to the reserve for health and safety reasons:

- prohibiting persons from entering or remaining in the reserve.

*Clause 35* empowers the Agency to act under *clause 34* in relation to a reserve despite the management plan for the reserve or the Reserves Act. However, the Agency, in doing so,—

- must take all reasonable steps in the circumstances to protect the integrity of the reserve; and
- where undertaking recovery work, or, if the reserve is adversely affected by the council's actions, must restore the reserve as closely as practicable to its prior condition.

However, those 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 recovery works that are necessary for permanent infrastructure associated with the rail corridors.

The Minister of Conservation retains the discretion to modify or revoke the authorisations in relation to Crown reserves managed by local authorities.

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

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

- it may not be practicable to completely avoid carrying out recovery works in reserves because of the nature of the surrounding environment;
- such use cannot otherwise be authorised under the Reserves Act;
- the requirements to take all reasonable steps to protect the integrity of the reserve, and to restore the reserve as closely as practicable to its prior condition, will appropriately manage adverse effects on the reserve.

#### **Order not broader than reasonably necessary**

The relevant Minister is satisfied that this aspect of the order is not broader than reasonably necessary as the modifications are geographically limited to sections of rail routes affected by a severe weather event (as specified in *Schedule 1*) together with all land, infrastructure, and other property adjacent to or associated with those sections. The modifications also apply only to recovery work. The definition of recovery work in *clause 4* is limited to the restoration of the function of a section of rail route that is affected by a severe weather event, including repair and rebuild activities, safety enhancements, and resilience improvements.

#### **Modifications to Public Works Act**

*Clause 21* provides that the relevant Minister's powers of acquisition under this order do not apply to the acquisition of interests in protected Māori land.

*Clause 21(2)* of the order modifies the definition of land in section 2 of the Public Works Act as meaning any estate or interest in land that is less than a freehold estate.

*Clauses 22 to 23* modify the operation of sections 18 and 23 to 26 of the Public Works Act if the Minister for State Owned Enterprises considers it reasonably necessary to take land for the purpose of recovery work. Section 30 of the New Zealand Railways Corporation Act provides that the powers and duties conferred and imposed on the Minister of Lands in respect of compulsory acquisition of the land by the Public Works Act are, so far as they are applicable and with any necessary modifications, conferred and imposed on the Minister for State Owned Enterprises in respect of all matters and works under the control of, or being carried out by, the New Zealand Railways Corporation. The Agency carries out the New Zealand Railways Corporation's operational functions under an agreement entered into between the Agency and the Corporation.

*Clauses 24 to 27* exclude the rights of objection to the Environment Court under the Public Works Act and instead apply an alternative process for the acquisition of land (with no requirement for negotiation before compulsory acquisition). *Clause 28* provides that any acquired land must be treated as having been acquired for Government work for the purposes of the Public Works Act.

The provisions of the Public Works Act relating to compensation remain unchanged.

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

The relevant Minister considers this aspect of this order is necessary or desirable for the purpose of the SWERLA, 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 Public Works Act would unreasonably delay the recovery work;
- the powers granted can be used only if the Minister for State Owned Enterprises considers it reasonably necessary to take land to enable the Agency to undertake recovery work.

#### **Order not broader than reasonably necessary**

The relevant Minister is satisfied that this aspect of this order is not broader than reasonably necessary for the following reasons:

- the modifications are geographically limited to the acquisition of freehold and lesser interests in land for rail realignment works at Awatoto and Esk Valley;
- under the modifications,—
  - the requirement to undertake a negotiated process before proceeding to compulsory acquisition has not been modified; and
  - protected Māori land has been excluded.

#### **Modifications to Railways Act**

*Clause 48* modifies the operation of sections 76(2) and 77(3) of the Railways Act if the relevant Minister considers it reasonably necessary to remove the requirement to

inform the person concerned of the right to apply to the District Court to set aside a notice to enable the Agency to carry out recovery works.

*Clauses 48 and 49* also—

- modify the operation of section 78(2) of the Railways Act if the Minister of Transport considers it reasonably necessary to remove the right of a person to apply to the District Court for an order setting a notice aside (and consequential references to the District Court powers and processes contained in sections 78(3), 78(4), and 78(6) of the Railways Act):
- provides that the period of time for a property owner to comply with section 77(6) of the Railways Act is to be reduced to 10 working days (as opposed to 20 working days) from the date of the notice. In lieu of the District Court objection process, the owner will have a 48-hour right to provide information that will be considered in respect of any decision to enter onto the land or seek recovery of costs.

*Clause 50* modifies section 86 of the Railways Act by providing that the modified section applies to all railway infrastructure (rather than just pre-1993 infrastructure as is currently the case in that Act) and applies to acts and operations necessary for the purposes of recovery works, rather than just inspecting or operating the rail network.

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

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

- the time required to negotiate and resolve objections to notices to trim or remove trees and hedges, lower fences or walls, or take measures to prevent damage to land on which railway infrastructure or premises are situated would unreasonably delay the recovery works:
- the Agency will be able to have the right of entry to existing railway infrastructure for recovery purposes under the SWERLA, including to repair, upgrade, and rebuild rather than just inspect and operate the rail network.

#### **Order not broader than reasonably necessary**

The relevant Minister is satisfied that this aspect of this order is not broader than reasonably necessary as the modifications are geographically limited to sections of rail routes affected by a severe weather event (as specified in *Schedule 1*) together with all land, infrastructure, and other property adjacent to or associated with those sections. The modifications also apply only to recovery work. The definition of recovery work in *clause 4* is limited to the restoration of the function of a section of rail route that is affected by a severe weather event, including repair and rebuild activities, safety enhancements, and resilience improvements.

**Modifications to New Zealand Railways Corporation Act**

*Clause 51* modifies the operation of section 14(5) of the New Zealand Railways Corporation Act and sets out that ministerial approval is not required due to any temporary cessation, withdrawal, or reduction of rail services on, or closure of, a railway line because of the severe weather events or as part of the recovery.

*Clause 52* modifies the operation of section 31(3) of the New Zealand Railways Corporation Act if the Minister of State Owned Enterprises considers it reasonably necessary to remove the requirement to inform the person concerned of the right to apply to the District Court to set aside a notice to enable the agencies to carry out recovery works.

*Clause 52(4)* provides that the period of time for a property owner to comply under section 31(5) of the New Zealand Railways Corporation Act is to be reduced to 10 working days (as opposed to 1 month) from the date of the notice. In lieu of the District Court objection process, the owner will have a 48-hour right to provide information that will be considered in respect of any decision to enter onto the land or seek recovery of costs.

*Clause 53* modifies the operation of section 48(e) of the New Zealand Railways Corporation Act and enables the Agency to give a 48-hour notice (as opposed to 3 months) to the owner or manager of a branch or siding to close or remove the connection with the railway.

**Relevant Minister's reasons**

The relevant Minister considers this aspect of this order is necessary or desirable for 1 or more purposes of the SWERLA, and is no broader than is reasonably necessary, because the time required to negotiate and resolve objections to notices to trim or remove trees and hedges, lower fences or walls, or take measures to close railway routes for repairs would unreasonably delay the recovery works.

**Order not broader than reasonably necessary**

The relevant Minister is satisfied that this aspect of the order is not broader than reasonably necessary as the modifications are geographically limited to sections of rail routes affected by a severe weather event (as specified in *Schedule 1*) together with all land, infrastructure, and other property adjacent to or associated with those sections. The modifications also apply only to recovery work. The definition of recovery work in *clause 4* is limited to the restoration of the function of a section of rail route that is affected by a severe weather event, including repair and rebuild activities, safety enhancements, and resilience improvements.

**Other preconditions satisfied**

The relevant Minister is satisfied that the following preconditions for the making of an order have been satisfied:

- the draft order has been reviewed by the Severe Weather Events Recovery Review Panel:

- the draft order has been provided to each leader of a political party represented in the most recent Parliament:
- the relevant Minister has had regard to the recommendations and comments provided by the Panel and each leader and the order has been amended to address those recommendations and comments:
- in regard to the elements of the order that relate to the RMA, the relevant Minister has considered the effects on the environment that could occur as a result of the order, and whether any adverse effects can be avoided, remedied, or mitigated:
- the engagement process under section 9 of the SWERLA has been complied with.

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*: 5 October 2023.

This order is administered by the Ministry of Transport.