



Regulatory Impact Statement: Amendment to Severe Weather Emergency Recovery Legislation (Hawke's Bay Flood Protection Works) Order 2024

Decision sought	<i>Cabinet agreement to develop an Order in Council under the Severe Weather Emergency Recovery Legislation Act 2023 to amend the Severe Weather Emergency Recovery (Hawke's Bay Flood Protection Works) Order 2024</i>
Agency responsible	<i>Ministry for the Environment</i>
Proposing Ministers	<i>Minister for the Environment</i>
Date finalised	<i>21 May 2025</i>

The proposal is to amend the Severe Weather Emergency Recovery (Hawke's Bay Flood Protection Works) Order 2024 (the 2024 Order). The 2024 Order was enacted under the Severe Weather Recovery Emergency Legislation Act 2023 (SWERLA). The 2024 Order provides a streamlined consenting process for flood protection works in eight locations in the Hawke's Bay, including Wairoa, to support recovery from Cyclone Gabrielle. These locations are identified in Schedule 1 of the 2024 Order by maps and descriptions.

Following further design work and community consultation, the Hawke's Bay Regional Council (the Regional Council) has proposed a preferred flood protection solution. The Council's preferred solution for Wairoa falls partially outside of the 2024 Order. This means the streamlined consenting process in the 2024 Order cannot be used unless the description in Schedule 1 is amended to cover the full area of the preferred solution.

Without this amendment, Wairoa will not be able to get the benefit of the regulatory relief Cabinet agreed to provide through the 2024 Order to progress the Council's preferred solution. This means Wairoa will face a slower, more complicated and less certain consenting process, or be restricted to the original flood protection proposals. This would delay Wairoa's recovery and potentially compromise the project.

Summary: Problem definition and options

What is the policy problem?

The 2024 Order provides a streamlined consenting process for flood protection works in Wairoa following Cyclone Gabrielle. The works are scheduled to commence in the summer 2025 construction season, provided resource consents are issued in time.

After community consultation, a preferred solution has been identified by the Regional Council which reduces adverse impacts on whenua Māori and homeowners. This solution

has the greatest level of community support, though no one solution has unanimous support. However, the preferred solution includes land that is not within the area described in Schedule 1 of the 2024 Order.

The 2024 Order cannot be used to progress the Regional Council's preferred solution without amendment. While alternative consenting processes exist, they are unlikely to deliver this project in a timely manner and are likely to increase costs.

The critical consequence of delay will be that the Wairoa community remains at significant risk from flooding events. Following Cyclone Gabrielle, a total of 626 properties (residential, commercial, industrial and rural) were classified as needing community level flood protection to manage future flood risk, including 380 properties with dwellings. Delays will impact the ability of these landowners to recover from Cyclone Gabrielle.

In addition, cost increases associated with delays and alternative consenting processes could impact on the viability of the project by increasing costs past the level of funding agreed by central government.

What is the policy objective?

The objective is to uphold the Government's decision in 2024 to provide regulatory relief to enable resource consents for flood protection works to be obtained in a timely manner. Success will be measured by the Regional Council being able to apply for a consent for their preferred solution under the streamlined consenting process in the 2024 Order.

What policy options have been considered, including any alternatives to regulation?

The Ministry's preferred option is to amend the 2024 Order. Amending the 2024 Order supports the Government's original intent for Wairoa's flood protection to progress under the streamlined consenting process in the 2024 Order. The 2024 Order enables flood protection works to be classified as controlled activities, enabling consents to be granted on a non-notified basis, and requires notice of a decision on the consent application to be issued within 30 days. Appeals to the Environment Court are avoided, reducing uncertainty and the risk of delays.

The alternative option is to make no change to the 2024 Order (the status quo). This option would mean Wairoa will need to either rely on alternative consenting processes to progress the Regional Council's preferred solution, be restricted to other solutions falling within the area defined within the 2024 Order or not progress the project. These would be decisions for Wairoa and are therefore outside the scope of this Regulatory Impact Statement.

Alternative consenting processes exist under the Resource Management Act 1991 (RMA) and the Fast-track Approvals Act 2024. However, neither of these options provide the speed and certainty of consenting compared to the pathway already provided through the 2024 Order.

It should be noted that there is a key project dependency outside the scope of this Regulatory Statement. The focus of this analysis is on the consenting process, which is an important step in the overall process. To proceed within the desired timeframe, the Regional Council still needs permission from landowners to access and acquire land. Gaining permission will be more difficult for any option that has less support and requires the Regional Council to access or acquire more land.

What consultation has been undertaken?

First, the Regional Council has consulted with the community on solutions for flood protection works. Initially, the consultation involved the Wairoa Flood Mitigations Scheme Stakeholder Group, mana whenua, river engineers and other technical experts. Engagement then expanded to include potentially impacted whānau, homeowners, landowners and the

broader Wairoa community. Direct engagement with potentially impacted homeowners and landowners regarding the two most viable options began in mid-October 2024. Engagement is still ongoing, and one-to-one engagement has continued regularly at the request of individual owners.

Second, the Ministry for the Environment previously undertook a three-week public consultation on the 2024 Order. This covered all matters in the 2024 Order, including the projects covered and the streamlined consenting process.

The Ministry has not yet consulted on the proposed amendment to the 2024 Order. This consultation will take place following initial decisions by Cabinet on progressing the amendment Order. Four days of engagement will be undertaken (the statutory minimum under SWERLA is three days), with targeted in-person engagement and an opportunity for the public to provide written submissions.

The proposed amendment is a direct consequence of the engagement undertaken by the Regional Council that has resulted in a preferred solution that falls partially outside the area in the 2024 Order. While it will enable the Regional Council to use the streamlined consenting process for the preferred solution, it will not limit or commit the community to a single solution.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?

Yes

Summary: Minister's preferred option in the Cabinet paper

Costs

The proposed amendment will bring the land of additional people under the 2024 Order. The streamlined process under the 2024 Order reduces the ability to provide input and removes the ability to appeal decisions in the Environment Court. A streamlined process also risks resulting in a less robust decision. These costs were accepted for the people within the area defined for flood protection works when the 2024 Order was enacted.

There will be minor costs to the Ministry and government agencies for the legislative amendment and statutory engagement.

Benefits

The Regional Council has put forward a preferred solution that reduces the number of homes to be removed from 16 to eight and impacts seven whenua Māori properties rather than 20. Two urupā are within the new alignment, but no marae. The project would protect the utilised component of these urupā (i.e. the kō iwi / burial sites) through stop banking.

Amending the 2024 Order will enable the Regional Council to continue work under a streamlined consenting pathway, reducing consent costs and supporting construction to commence much sooner than under other consenting pathways. Using the streamlined consenting process will have some fixed benefits (reduced process time and costs) and wider benefits from the flood protection including:

- enabling 380 homes in Wairoa to be safe for residential use, so these people can rebuild and recover
- providing flood protection to 246 more properties, which include homes, businesses, schools and recreational facilities, as well as essential services and roads

- employment and money spent locally during construction.

Balance of benefits and costs

The benefits of the proposed amendment likely outweigh the costs. The amendment will uphold the Government's intent that the 2024 Order deliver earlier certainty to households in Wairoa and allow other recovery activities to follow, supporting the Wairoa District's social and economic recovery. Enabling the Regional Council to progress the preferred solution under the 2024 Order increases the likelihood of delivering flood protection for Wairoa sooner.

Implementation

The proposed amendment Order will be enacted by the Governor-General, upon recommendation by the Minister for the Environment, pursuant to SWERLA. Implementation of the amendment Order will be undertaken by local government through the lodgement of the relevant consents for the Wairoa flood protection works under the consenting pathway in the 2024 Order.

The Minister for the Environment has a statutory obligation to keep Orders under review which will provide an ongoing opportunity to identify and address any risks.

Limitations and Constraints on Analysis

This analysis relies on design work and engagement undertaken by the Regional Council to prepare the preferred option for flood protection works in Wairoa and is not intended to duplicate any element of that process.

I have read the Regulatory Impact Statement, and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager's signature:



Katherine Wilson
General Manager – Adaptation
 Date: 20 May 2025

Quality Assurance Statement

Reviewing Agency:

QA rating: Partially meets

Panel Comment:

A quality assurance panel (the Panel) from the Ministry for the Environment has reviewed the Regulatory Impact Statement (RIS): Severe Weather Emergency Recovery Legislation (Hawke's Bay Flood Protection Works) Amendment Order.

The Panel considers the RIS 'partially meets' the criteria. The rationale for the amendment is clear and the options well-articulated. Through the development of the original Order in Council and flood protection plan there has been extensive consultation of affected parties; however, we note that the Ministry has not yet undertaken consultation on the proposed amendment to the 2024 Order, and is relying upon the previous consultations.

It was not always clear throughout the document which benefits are marginal to the choice of consenting pathway, or dependent on other outcomes to be achieved. Impacts of future engagement, judicial review, and a tighter timeframe for consent decisions also could have been more fully explored. The Panel does not believe these issues would change the overall assessment that benefits outweigh costs.

Section 1: Diagnosing the policy problem

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

Cyclone Gabrielle and flooding in Wairoa

1. In February 2023, flooding from Cyclone Gabrielle caused significant damage in Wairoa. The Wairoa River burst its banks and flooded homes and businesses, particularly in the North Clyde area. Property damage was extensive due to the depth of flows and significant volumes of silt. The effects are still being felt today, with people either displaced and/or living in temporary accommodation. Repairs to flood-damaged properties are continuing and people need certainty about flood protection.
2. The sudden onset of the flooding through North Clyde was due to the area acting as a secondary flow path for the river (the water flows over this area if the river breeches its banks). A total of 816 properties in Wairoa covering 378 hectares were partially or completely flooded during Cyclone Gabrielle.
3. Affected properties included many residential and lifestyle properties, as well as properties used for bowling; a motel; marae and whenua Māori areas; schools and pre-schools; A&P Society Show Grounds; utility services; boating activities; meat processing at the AFFCO Plant; roads and road services; clubs; community services; petrol sales; other retail facilities and a wide range of other commercial enterprises.
4. Under the Future of Severely Affected Locations framework, 380 residential dwellings in Wairoa were identified as requiring community-level flood protection to be safe for residential use (Category 2C).¹
5. On 26 June 2024, Wairoa declared a State of Local Emergency following another significant rainfall event. While this event is not related to Cyclone Gabrielle or the proposal in this paper, it has added to the challenges facing the Wairoa community.

¹ The Future of Severely Affected Locations Framework provides a structured approach for categorising flood-affected property. It includes measures such as community-level interventions to be safe for residential use (Category 2C), voluntary buyouts for high-risk properties (Category 3), and a tailored approach for whenua Māori.

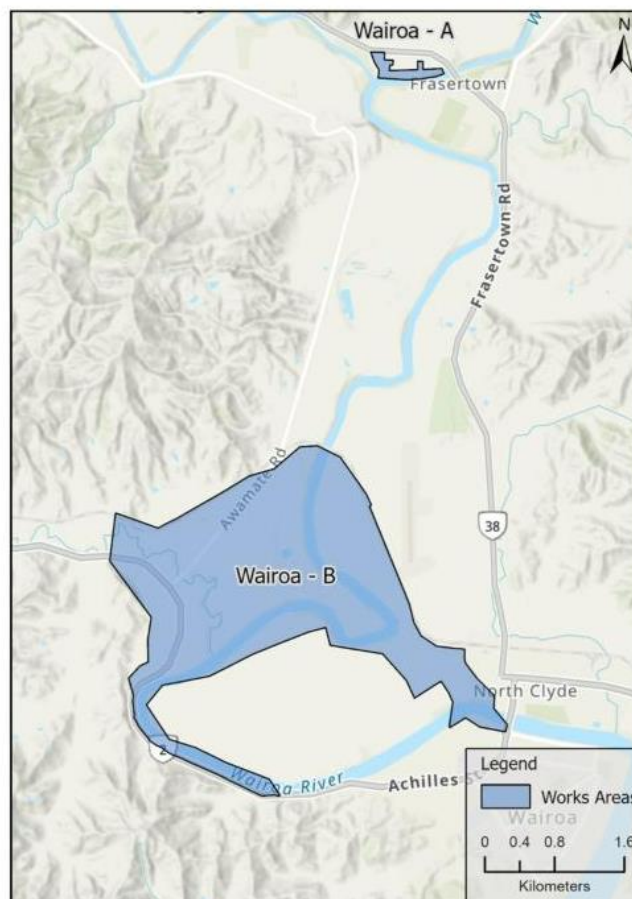
Wairoa flood mitigation project

6. The Hawke's Bay Regional Recovery Plan (the Recovery Plan) sets out the region's goals and priorities for recovering from Cyclone Gabrielle.² The Recovery Plan identifies flood protections as a precondition for many recovery activities to ensure recovery actions and works are protected from future flooding. The Wairoa flood mitigation project is one of these projects.
7. A significant driving component of the Recovery Plan has been to inform budget requests to central Government. The Government has agreed to fully fund the flood protection solution for Wairoa up to a value of \$70 million.

Regulatory relief provided by 2024 Order

8. SWERLA enables the Government to implement temporary changes to laws through Orders to assist communities to which that Act applies to recover from severe weather events. SWERLA will expire on 31 March 2028, and no new Orders can be enacted after 31 March 2026.
9. In 2024, the Government agreed to provide regulatory relief to the Hawke's Bay region to speed up recovery. The 2024 Order was enacted under SWERLA for this purpose. The 2024 Order provides for a temporary law change which streamlines the consenting process under the RMA for the eight projects covered by the Order (including Wairoa) and removes appeal rights.
10. The 2024 Order is intended to enable consents for flood works to be obtained in a timely manner. Flood protection will support people and communities in Hawke's Bay to recover from the effects of Cyclone Gabrielle and protect them against future events. The locations identified in the 2024 Order for flood protection works in Wairoa are shown in the map below (Wairoa-A, the small area at the top, and Wairoa-B, the larger area at the bottom).

² Hawke's Bay Regional Recovery Plan 2.0 (July 2024).
<https://www.hawkesbayrecovery.nz/assets/Uploads/Te-Matau-a-Maui-Hawkes-Bay-Regional-Recovery-Plan-2.0-July-2024-FINAL.pdf>.



Timeframes for alternative consenting processes

11. There are existing consenting processes in primary legislation. However, obtaining resource consents under the RMA for flood protection works can be a complex process involving notification of consent applications and lengthy timeframes for public submissions and hearings. Environment Court appeal proceedings can span several years before consents are issued.
12. A report by Sapere in 2021 found that consent applications are now taking much longer to be processed and the time taken to make decisions on consent applications for infrastructure projects increased by as much as 150% when comparing the periods 2010-2014 to 2015-2019. Te Waihangā has also assessed the timeframe for complex infrastructure projects as being between 365 and 425 days.³
13. Table 1 sets out some generalised estimates of consenting timeframes for complex infrastructure proposals under the RMA (note these are not the same as the statutory timeframes in the RMA). In comparison, an amendment to the Order could enable consents to be obtained in time for works to commence in the 2025 summer construction season (with no risk of appeals).

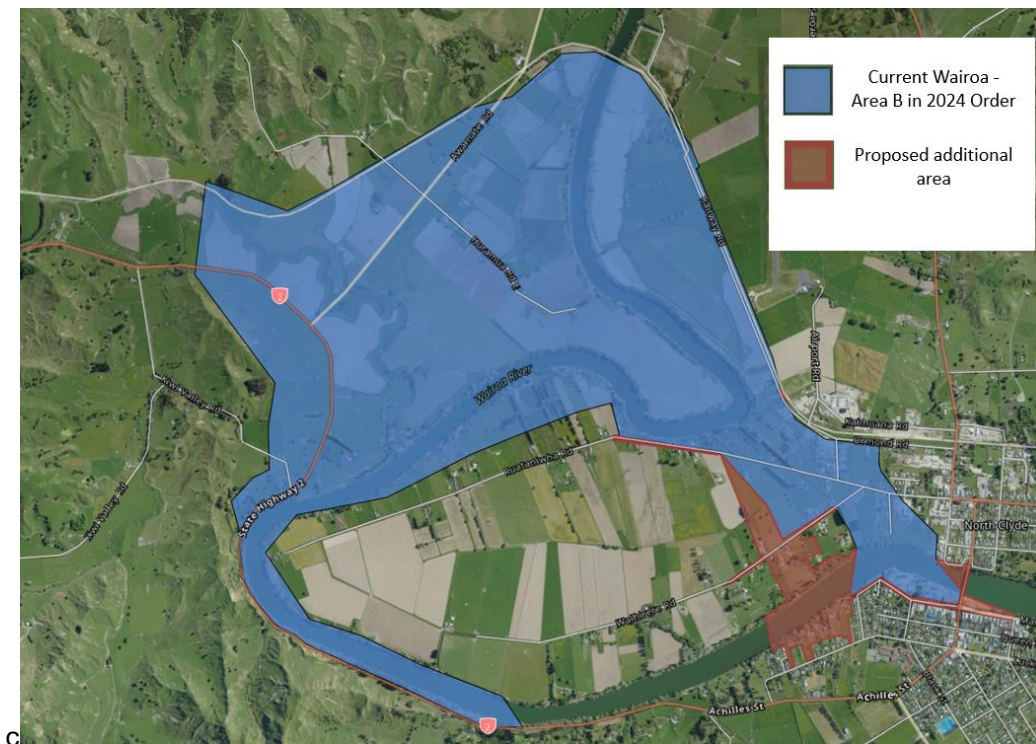
³ Te Waihangā Strategy. <https://tewaihangagovt.nz/the-strategy/7-a-world-class-infrastructure-system-how-we-get-there/7-3-an-enabling-planning-and-consenting-framework>.

Table 1: Generalised estimates of timeframes consenting complex infrastructure projects under the RMA	
Process	Estimated timeframe
RMA standard resource consenting pathway	18 months - with potential for further delay through appeals
RMA resource consents granted via direct referral to the Environment Court	12 months - reduced risk of appeals on consent decision
RMA plan change processes to amend regional and district plans	24 months - with potential for further delay through appeals Further consents required once plan change is processed

14. The Fast-track Approvals Act 2024 also offers an alternative consenting process. The Act itself does not provide a definite timeframe for consenting projects, and as the Act became operational in 2025, no time estimates are available yet.

What is the policy problem or opportunity?

15. The 2024 Order was enacted following preliminary design work to identify a range of options for flood protection in Wairoa. Since then, community consultation has been undertaken along with refinement of the design to minimise the impacts. Consequently, the proposed location of the Wairoa flood protection works has changed. The Regional Council's preferred solution:
- has the greatest level of community support (noting no solution has unanimous support)
 - reduces impacts on whenua Māori and homeowners
 - allows floodwater to follow a direct overland path.
16. One of the safeguards for developing an Order under SWERLA is that the Order is not broader (geographically or in application) than reasonably necessary. It is for this reason that geographical boundaries for the Wairoa flood protection works were included in the 2024 Order. However, the preferred solution falls outside of the 2024 Order area as set out in the following map.



17. The works are scheduled to start this summer under the Regional Recovery Plan, but consents must be obtained before this work can begin. The 2024 Order cannot be used to obtain resource consent for the Regional Council's preferred solution without amendment. If the 2024 Order is not amended Wairoa would need to either rely on alternative consenting processes to progress this solution, be restricted to other solutions falling within the area defined within the 2024 Order or not progress the project. As outlined in Table 1 above, alternative consenting processes would take longer, thereby delaying construction and the delivery of flood protection and, consequentially, Wairoa's recovery.
18. Flood protection will mean 380 homes can be reclassified from Category 2C (community level risk mitigation needed) to Category 1 (essentially low risk) under the Future of Severely Affected Land Categorisation Framework. Without flood protection, affected homes may be reclassified as Category 3 (intolerable risk to human life, not suitable for residential use). The proposed flood protection will also protect infrastructure, businesses, schools, community organisations and whenua Māori.

What objectives are sought in relation to the policy problem?

19. The objective is to uphold the Government's decision in 2024 to provide regulatory relief to enable resource consents for flood protection works to be obtained in a timely manner.
20. The proposed amendment will enable the Regional Council to obtain resource consents for the Council's preferred solution under the 2024 Order. Progressing the preferred solution will mean:
 - a. the Wairoa community can recover earlier from the effects of Cyclone Gabrielle and is protected up to a 1 in 100-year event

- b. the significant social and economic costs due to the disruption caused by the flooding are addressed, and the cost of response and recovery from future flooding reduced
 - c. certainty is provided to people with houses on land that is not suitable for residential use without flood protection.
21. Success will be measured by the Regional Council being able to apply for a consent for the Council's preferred solution under the streamlined consenting process in the 2024 Order.

What consultation has been undertaken?

22. The proposed amendment to the 2024 Order is intended to respond to community consultation by supporting implementation of the Regional Council's preferred solution for the Wairoa flood protection works.

Community consultation undertaken by Council to identify a preferred solution

23. The Regional Council has undertaken public consultation to identify this preferred solution. A particular focus has been working with owners of whenua Māori, whānau and other landowners, to minimise the impact of works.
- a. Earlier in the project, engagement largely involved the Wairoa Flood Mitigations Scheme Stakeholder Group, mana whenua, river engineers and other technical experts, as the project developed technically viable options to take to the community.
 - b. Engagement then extended out to include potentially impacted whānau, home and landowners as well as the broader Wairoa community.
 - c. Direct engagement with landowners potentially impacted by the two most technically viable options commenced from mid-October 2024. The Regional Council has advised that in many cases one-to-one engagement has continued at the request of individual owners.
 - d. Both the Māori Land Court and Te Tumu Paeroa have been engaged on the project and their advice and input sought with respect to engaging with potentially impacted landowners, including owners of whenua Māori.
24. A dedicated project website (<https://www.wairoafloodproject.co.nz>) has been developed with information, reports and updated news being loaded regularly. Appendix Two provides more information about the engagement led by the Regional Council on the Wairoa flood mitigation project.
25. The preferred solution is a direct result of this engagement and is supported by the Hawke's Bay Regional Recovery Agency, the Regional Council, the Wairoa District Council and the Crown Manager appointed to the Wairoa flood protection works project. While there are different views in the community about the best proposal for flood protection, amending the Order does not commit the community to a solution.
26. See Appendix One for more details about engagement undertaken by the Regional Council.

Consultation on the 2024 Order

27. Consultation was undertaken by MfE on the original Order, which received support from a range of key groups. Further information on this consultation is set out in Appendix Two of the Supplementary Analysis Report for that Order, which is available on the Ministry for the Environment's website.⁴

Consultation on the proposed amendment to the 2024 Order

28. SWERLA requires public engagement on Order proposals. Subject to Cabinet decisions on the proposal, four days of engagement will be undertaken (the statutory minimum under SWERLA is three days) on the proposed amendment. Targeted in-person engagement will be undertaken and there will be an opportunity for the public to provide written submissions.
29. The proposed amendment is a direct consequence of the engagement undertaken by the Regional Council that has resulted in a preferred solution that falls partially outside the area in the 2024 Order. While it will enable the Regional Council to use the streamlined consenting process for the preferred solution, it will not commit the community to a single solution.

Section 2: Assessing options to address the policy problem

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

30. The criteria for evaluating options are:
- effective – the option provides certainty and enables timely consenting to support recovery
 - efficient – the option minimises costs and impacts
 - fair – the option is equitable.
31. Effectiveness has been prioritised as it is of the greatest importance to enable resource consent to be obtained in a timely manner.
32. Te Tiriti implications were also considered alongside these criteria.

What scope will options be considered within?

33. The scope of options is limited to actions central government could take to ensure a streamlined consenting process is in place. This means the decision for central government is limited to whether to amend the 2024 Order. If the 2024 Order is not amended the status quo will apply.
34. The status quo means that Wairoa:

⁴ <https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/hawkes-bay-flood-protection-works>.

- would need to rely on an existing consenting pathway in the RMA or under the Fast-track Approvals Act 2024 to progress the Regional Council's preferred solution, or
 - would be restricted to other solutions (the original flood protection proposals) falling within the area defined in the 2024 Order, or
 - might not progress the project if delays and consenting costs for alternative pathways increased the cost of the project past the level up to which central government has undertaken to fund the project.
35. Which of these options might be pursued would be a decision for Wairoa and is outside the scope of this analysis. The Government need only decide whether to agree to amend the 2024 Order or not.

What options are being considered?

36. The options are to amend the 2024 Order or not.

Option One – Do not amend the 2024 Order (status quo)

37. This option is the status quo and involves retaining the existing description for Wairoa flood protection works in Schedule 1 of the 2024 Order. Under this option, central government takes no further action. To progress the flood works, Wairoa would be restricted to the original flood protection proposals to benefit from the regulatory relief the Government intended or would need to rely on consenting processes under the RMA or Fast-track Approvals Act 2024 to progress the Regional Council's preferred solution. As noted above, whether to pursue another solution or alternative consenting options for the preferred solution would be a decision for local government.

Option Two – Amend the 2024 Order (preferred)

38. The preferred option is to amend the description for the Wairoa flood protection works in the 2024 Order to include the additional area needed for the Regional Council's preferred solution (noting the current footprint only contains part of this area). No other changes to the 2024 Order are sought. This option requires an amendment to the 2024 Order.
39. The Ministry considered implementing this amendment by reducing the land covered by the 2024 Order so that it only covers the preferred solution. Retaining land subject to the original Order is still necessary as engagement is ongoing and there remains a possibility that changes could still be needed as part of both the engagement and consenting processes. Engagement requires a willingness to hear from affected parties, which could lead to a shift or change in a proposal.

How do the options compare to the status quo/counterfactual?

40. Table 2 sets out options assessment comparing the preferred option to the status quo.

Key:

++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
--	much worse than doing nothing/the status quo/counterfactual

Table 2 – options assessment

	Option One – do not amend 2024 Order (status quo)	Option Two – amend 2024 Order (preferred)
Effective – the option provides certainty and enables timely consenting to support recovery	<p>0</p> <p>The Regional Recovery Agency and Regional Council have indicated that not amending the 2024 Order could affect the viability of the project due to its sensitivity to time delays and increasing costs. The community would remain unprotected from a 1-in-100-year flood and affected landowners would remain in a state of uncertainty.</p>	<p>++</p> <p>Amending the 2024 Order provides the greatest certainty to the community (including affected landowners) that works on the flood mitigation project can start in summer 2025 and speed up the community's recovery.</p>
Efficient – the option minimises costs and impacts	<p>0</p> <p>Costs of consenting under pathways other than the 2024 Order will be higher, as they will take longer and be more complex, with the potential for appeals. They could also duplicate work already undertaken to support consenting under the 2024 Order.</p>	<p>+</p> <p>The 2024 Order already provides a streamlined consenting process and utilising this process will avoid unnecessary cost, delays and duplication inherent in seeking approval under another pathway.</p>
Fair – the option is equitable	<p>0</p> <p>If the 2024 Order is not amended, it cannot be used for this project. Impacts will still fall on the same group of people if an alternative consenting pathway is used. Greater consultation and appeal rights under other consenting processes must be balanced against the necessity for timely protection against future floods and faster recovery.</p>	<p>0</p> <p>While the preferred solution has the greatest level of community support and reduces impacts on whenua Māori and homeowners there are trade-offs. The streamlined resource consent process limits opportunities for public input and appeal. However, the urgency of providing timely protection against future floods outweighs the benefits of a full consenting</p>

		process. Judicial review will still be available as a safeguard.
Te Tiriti considerations	0 Other consenting pathways may enable more participation from Māori. However, a streamlined process offers Māori the benefit of flood protection sooner. Unless the 2024 Order is amended, these benefits are not available for the Regional Council's preferred solution, which is intended to minimise impacts on Māori.	0 The rationale for amending the 2024 Order is because the preferred option has the least impact on whenua Māori and the greatest community support. The 2024 Order includes a process for consulting Māori and makes no changes to the Te Ture Whenua Māori Act 1993 or Public Works Act 1981 (so any land use arrangements under these Acts will continue to apply).
Overall assessment	0 Overall, the status quo poses a real and tangible risk to the viability of the flood protection works and Wairoa will also not get the benefit of the regulatory relief Cabinet agreed to provide in the 2024 Order.	++ Wairoa will get the benefit of the regulatory relief Cabinet agreed to provide in the 2024 Order, resulting in a faster recovery and greater resilience following Cyclone Gabrielle.

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

41. Option Two is likely to best address the problem, meet the policy objectives and deliver the highest net benefits. Amending the 2024 Order reduces uncertainty for the project by ensuring the Regional Council has access to the regulatory relief the Government intended to provide for this project in the 2024 Order.
42. Not amending the 2024 Order prevents the preferred solution from progressing under the streamlined resource consent process. Alternative consenting pathways cannot provide the speed and certainty of consenting compared to the pathway already provided through the 2024 Order. In addition to Table 1 in this paper, Appendix One provides supporting analysis for this assessment.
43. Not amending the 2024 Order could delay the project beyond the 2025 summer construction season or even see the project abandoned. Delaying or abandoning the project would impact significantly on Wairoa's recovery and future resilience particularly because Wairoa would remain unprotected from a 1-in-100-year flood and there would be a further delay in providing certainty to Category 2C landowners, which would have negative social and economic impacts.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

44. Yes.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

45. Table 3 sets out the marginal costs and benefits of the preferred option.

Table 3: Marginal costs and benefits of the preferred option			
Affected groups <i>(identify)</i>	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Regulated groups			
Newly affected landowners and occupiers	The costs of the preferred option primarily fall on the newly affected landowners and occupiers. The 2024 Order restricts the ability for these people to provide input on or appeal consent decisions, but judicial review remains available.	Medium	High
Additional benefits of the preferred option compared to taking no action			
Regulated groups			
Landowners	Landowners will have increased certainty, and potentially faster flood protection, increasing their confidence in their ability to repair, build, sell, receive rents from and insure properties protected from flooding. We understand some members of the community have become concerned about insurability following Cyclone Gabrielle.	High	High
Regulators			
Councils	The 2024 Order provides an expedited and streamlined consent process, reducing consenting costs and avoiding appeal costs. The Regional Council has already developed and implemented processes under the 2024 Order and has estimated the associated	High (one-off)	High

	<p>projected costs are within budget. The intention is that Regional Council as applicant will lodge the resource consent as soon as the Order comes into effect to avoid any time delays and associated costs.</p> <p>The 2024 Order provides greater cost certainty by avoiding RMA appeals which can be a significant cost for major infrastructure projects.</p>		
Central government	The 2024 Order removes the ability to appeal, removing potential for costs to the Environment Court.	Medium (one-off)	High
Others			
Residents in affected houses	The 2024 Order could enable residents to benefit from the flood works earlier and resolve the disruption they currently face (such as living in temporary accommodation, unable to repair, rebuild or sell). Flood protection will preserve the residential use of 380 Category 2C properties.	High (ongoing)	Medium
Iwi/ hapū/Māori: households	Māori households were disproportionately affected by the flooding. The 2024 Order consent pathway could enable Māori households to move earlier into permanent accommodation.	High (ongoing)	Medium
Workers	Amending the 2024 Order could enable the proposed flood mitigation project to get underway sooner improving certainty for civil infrastructure workers looking at future work in the region.	Medium	Medium
Other residents	The proposed Order would ensure there are no passed-on costs associated with a standard RMA consenting process (through rates).	Low	High

Summary

46. The marginal costs primarily fall on newly affected landowners. The 2024 Order reduces their ability to provide input on or appeal consent decisions, though judicial review remains available.
47. The marginal benefits of the preferred option are significant. The expedited consent pathway could enable residents to benefit from the flood works earlier, resolving current disruptions and preserving the residential use of 380 Category 2C properties. Māori households, disproportionately affected by the flooding, could move into permanent accommodation sooner.

48. The costs of consenting the project are expected to be lower than if alternative consenting pathway were used, as the 2024 Order replaces public notification, submission, and hearing steps with a simplified process. This process avoids costly appeals to the Environment Court. The Regional Council has already invested time and resources in developing processes under the 2024 Order, so continuing to use this process would avoid duplication.
49. The Regional Council's preferred flood protection solution minimises the impact on homes and whenua Māori. This increases community support and the likelihood of delivering flood protection for Wairoa, and of completing the work sooner. Landowners will have increased confidence in their ability to repair, build, sell, rent and insure properties that will be protected from flooding.
50. The evidence supporting the benefits of the 2024 Order consent pathway is of medium certainty, as it is only one part of the overall process. Additionally, quantifying the benefits is challenging as the broader social, economic and cultural impacts are difficult to measure, such as community rebuilding and increased confidence in property use.

Section 3: Delivering an option

How will the proposal be implemented?

51. The amendment Order will be enacted by the Governor-General, upon recommendation by the Minister for the Environment, pursuant to SWERLA.
52. Implementation of the amendment Order will be undertaken by local government through the lodgement of the relevant consents for the Wairoa flood protection works under the consenting pathway in the 2024 Order. The current timeline for the project provides for the works to be consented and constructed prior to the expiry of the 2024 Order on 31 March 2028.
53. To meet the timeframes for this project, the Regional Council must seek permission from landowners for land access. Without permission, the Regional Council would need to pursue access and acquisition through the Public Works Act 1981.⁵

How will the proposal be monitored, evaluated, and reviewed?

ORDER review

54. SWERLA requires Orders to be kept under review by the relevant Minister, until they expire. The 2024 Order will expire on 31 March 2028.
55. The Ministry for the Environment is currently undertaking a review of eight Orders for which the Minister for the Environment is the relevant Minister. The review of the 2024 Order has been deferred until after the proposed enactment of the amendment Order.
56. In carrying out a review of an Order, the relevant Minister must be satisfied that the Order continues to meet the statutory test in section 8(1)(a) of SWERLA:

⁵ The 2024 Order makes no changes to the Te Ture Whenua Māori Act 1993 or Public Works Act 1981 and any land use arrangements under these Acts will continue to apply.

- the Order is necessary or desirable for one or more purposes of SWERLA
- the extent of the Order is not broader (including geographically broader in application) than is reasonably necessary to address the matters that gave rise to the Order
- the Order does not breach section 11 of the SWERLA (section 11 primarily relates to custody and detention)
- the Order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990.

Monitoring and evaluation of flood works

57. Monitoring and evaluation of all flood works projects under the 2024 Order, including Wairoa, is the responsibility of local government. The Regional Council monitors resource consents, checks activities comply with regional plan rules and uses enforcement tools when conditions are breached. The process of compliance monitoring involves carrying out inspections and using compliance approaches to promote behaviour change and incorporate best practice.

Appendix One: Wairoa flood mitigation project – engagement summary

1. The Wairoa Flood Mitigation Project team is a collaborative effort involving several key partners and stakeholders. The primary partners include the Wairoa District Council, Tātau Tātau o Te Wairoa Trust and the Hawke's Bay Regional Council. Tātau Tātau o Te Wairoa Trust is the Post Settlement Governance Entity (PSGE) for Te Rohe o Te Wairoa.
2. The project team has been working on communication and engagement initiatives to support the project. Earlier in the project, engagement initiatives largely involved the Wairoa Flood Mitigations Scheme Stakeholder Group, mana whenua, river engineers and other technical experts, as the project worked to toward technically viable options to take to the community. More recently, engagement activities have been extended to include potentially impacted whānau, home and landowners, and the broader Wairoa community.
3. Direct one-to-one engagement with home and landowners potentially impacted by the two most technically viable options (1C and 1D) commenced mid-October 2024. In many cases one-to-one engagement has continued at the request of individual owners.
4. The project team is working closely with Te Tumu Paeroa and the Māori Land Court to seek guidance and advice on land access and acquisition. This is part of the effort to minimise the impact on whenua Māori and ensure that the flood protection works are culturally sensitive and acceptable. Te Tumu Paeroa provides trustee services to help manage and protect Māori land.
5. With support of the Māori Land Court, a Judicial Conference was held in late February 2025, with information hui for owners of whenua Māori commencing in late March. Further engagement with owners of whenua Māori is ongoing.
6. In mid-February 2025, Hawke's Bay Regional Council made the decision to support the progression of Option 1C, as recommended by the Crown Manager and Wairoa District Council. This endorsement was made subject to further refinement of the profile and alignment of the proposed floodway to minimise impacts on owners of whenua Māori. In mid-March 2025, Hawke's Bay Regional Council confirmed a refined Option 1C+ as the preferred flood mitigation option for North Clyde, as recommended by the Crown Manager and Wairoa District Council.
7. Ongoing conversations with home and landowners regarding their individual circumstances, preferences and aspirations have occurred and, where possible, refinements or adjustments to the preferred flood mitigation solution have been discussed.
8. A dedicated project website (<https://www.wairoafloodproject.co.nz>) has been developed with information, reports and updated news being loaded regularly. This site also has contact details for the project team.

Appendix Two: Analysis of timeframes for alternative consenting pathways

Alternative consenting pathway	Challenges that could affect timeframes for the Wairoa flood protection works
Existing RMA processes (including standard consenting, direct referral to the Environment Court, designations)	<p>Existing RMA consenting processes:</p> <ul style="list-style-type: none"> • have an inherent risk of delay due to public notification requirements and Environment Court appeals • are slower and more complicated processes than the bespoke regulatory pathway provided through the 2024 Order • would disappoint the expectation of the Wairoa community that regulatory relief has already been made available through the 2024 Order.
Fast-track Approvals Act 2024	<p>Fast-track:</p> <ul style="list-style-type: none"> • does not provide a definite timeframe for progressing a project but the timeframe for an Order is well-understood and can likely be completed by the deadline of end August 2025 • would duplicate work as a streamlined consenting process is already in place in the 2024 Order, and the Regional Council has invested funding and resources in developing and implementing processes under the 2024 Order • requires access approvals for Māori land to be resolved before a referral is made (under the 2024 Order pathway, this step can concur concurrently with Order development).