

Repairing damaged state highways and railway lines

Orders in Council engagement material
Severe Weather Transport Response

June 2023

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Glossary of terms and abbreviations

DOC	Department of Conservation
GPS-LT	Government Policy Statement – Land Transport
LTMA	Land Transport Management Act 2003
MfE	Ministry for the Environment
Ministry	Te Manatū Waka Ministry of Transport
NAL	North Auckland Line
NLTF	National Land Transport Fund
NLTP	National Land Transport Plan
OiC	Order in Council
PNGL	Palmerston North to Gisborne Line
PWA	Public Works Act 1981
RLTP	Regional Land Transport Plan
RMA	Resource Management Act 1991
Recovery Act	Severe Weather Emergency Recovery Legislation Act 2023

1 We want to know what you think

Te Manatū Waka | The Ministry of Transport (**the Ministry**) is proposing temporary law changes through three Orders-in-Council under the Severe Weather Emergency Recovery Legislation Act 2023 (**the Recovery Act**) to support Waka Kotahi New Zealand Transport Agency (**Waka Kotahi**) and KiwiRail to do recovery and rebuild works on damaged state highways and rail lines.

This public engagement is designed to get your feedback on these proposals and will run from 27 June 2023 to 10 July 2023. We have identified several questions on page 7 which would be useful to get your responses to.

This public engagement does not replace any engagement requirements on Waka Kotahi or KiwiRail prior to undertaking recovery work.

2 State highways and railway lines are substantially damaged

In January and February 2023, the North Island experienced a series of severe weather events. This caused large-scale and geographically spread damage to the state highway and rail network. It also weakened areas that will continue to be damaged in future weather events over the coming months.

Sections of the state highway are impassable or have restricted access, with some landowners unable to get on to their property easily or at all. The rail network is just as impacted with some lines no longer usable or viable.

This damage has disrupted communities and the supply chain, and impacted on people's ability to access employment, education, and other key services. Many of the affected areas have high Māori populations, particularly in Northland, Auckland, Tairāwhiti and Hawke's Bay.

If the damage to state highways and rail lines is not addressed as soon as possible, there will be ongoing social and economic impacts for affected whānau, communities, regions, and New Zealand more broadly. This is because of the critical role transport plays in connecting people and goods and services, and in enabling sectors such as agriculture, horticulture, and forestry to flourish.

3 Recovery and rebuild works are needed at pace and scale

Waka Kotahi and KiwiRail are already doing works to repair damage and restore immediate access to communities. These kinds of works include clearing a slip, opening a single lane, or temporarily installing a bailey bridge. There are processes available to progress these emergency works in a timely way.

The next step for Waka Kotahi and KiwiRail is to get started on recovery and rebuild works for more significant damage. Examples of these kinds of works include building a new bridge or retaining wall or realigning a state highway or rail line. It will take time to inspect the damage, determine solutions, and then undertake the construction. While this happens, communities will remain disconnected or have less access than they are used to.

The approval processes needed to get started on works is a key reason why it takes time to undertake recovery and rebuild works. Waka Kotahi and KiwiRail need to get approvals for planning, funding, and implementing works. However, these approvals are not well-coordinated. They have different timeframes, different information requirements, and different decision-makers. They must all be applied for separately. Sometimes it can take years to get them all sorted so construction can begin.

4 Temporary law changes will enable recovery and rebuild works to get underway more quickly

The Ministry is proposing temporary law changes to enable Waka Kotahi and KiwiRail to use streamlined approval processes so they can get started on recovery and rebuild works more quickly and in a more coordinated way. This will help to reduce disruption, complexity, duplication of effort and cost. The mechanism to do this is a piece of secondary legislation called an Order in Council (**OiC**).

The Recovery Act enables OiCs to be put in place to help communities recover from the impacts of the severe weather events. Key steps in creating an OiC under the Recovery Act include public engagement and review by an independent panel.

These temporary law changes will only apply to recovery and rebuild works undertaken by Waka Kotahi and KiwiRail on their state highways and rail lines. They will not apply to local roads administered by local authorities.

The OiC mechanism was successfully used to respond to the Kaikōura earthquake for a range of response and recovery activities, including the successful rebuild of the Coastal Route by Waka Kotahi and KiwiRail. The Ministry has drawn on lessons from the Kaikōura earthquake experience when developing the proposed temporary law changes.

5 Three Orders-in-Council are proposed

The Ministry is proposing to progress the temporary law changes through three OiCs that will:

- modify the Land Transport Management Act 2003 (**LTMA**) to streamline some of the planning and funding approval processes that apply to activities funded by the National Land Transport Fund (**NLTF**);
- support recovery works by Waka Kotahi within the legal road boundary or within 50 metres either side of it;
- support recovery and rebuild works by KiwiRail, with realignment at two sites (Awatoto and Esk Valley).

The table below sets out the legislation where temporary changes are proposed.

Table 1 Legislation where temporary changes are proposed

Proposed OiC	OiC to modify the Land Transport Management Act 2003	OiC for repair and recovery works to be undertaken by Waka Kotahi	OiC for repair and recovery works to be undertaken by KiwiRail
Relevant legislation	Land Transport Management Act 2003	Resource Management Act 1991 Conservation Act 1987 Reserves Act 1977 Wildlife Act 1953 Freshwater Fisheries Regulations 1983 Public Works Act 1981	Resource Management Act 1991 Conservation Act 1987 Reserves Act 1977 Wildlife Act 1953 Freshwater Fisheries Regulations 1983 Public Works Act 1981 Railways Act 2005 New Zealand Railways Corporation Act 1981

The OiCs do not apply to all recovery and rebuild works. **Annex 1** sets out the specific parts of the state highway and rail networks that will be covered by the OiCs and provides a summary of the types of works required to address the damage. These are locations where emergency works processes are not sufficient to enable the recovery and rebuild.

5.1 OiC 1: Modifying the LTMA to streamline planning and funding approval processes

The Ministry is proposing an OiC that will streamline certain requirements in the LTMA that could make it difficult to do recovery and rebuild works quickly and divert resources away from the recovery and rebuild effort. This OiC will be in place until 31 August 2024.

Waka Kotahi and the Minister of Transport in relation to rail activities must meet various requirements before approving activities through the National Land Transport Fund (NLTF). While the LTMA largely exempts emergency works activities from these requirements, the usual processes apply once basic access and public safety is restored. This makes it challenging to plan and deliver recovery works activities.

For example, without this OiC, recovery activities could not receive NLTF funding without Waka Kotahi or KiwiRail modifying existing three-yearly planning documents including the Government Policy Statement on land transport (GPS-LT), the National Land Transport Plan (NLTP) and Regional Land Transport Plans (RLTP). This can be time-consuming and complex.

This OiC will extend the exemptions that apply to emergency works activities to recovery activities. This will streamline the planning and approval of NLTF-funded transport recovery works, and provide minimal need to change existing planning documents or procurement procedures.

The OiC will not apply to rebuild works.

5.2 OiCs 2 and 3: Supporting works by Waka Kotahi and KiwiRail

The Ministry is proposing two OiCs that will streamline and coordinate key approval processes so recovery and rebuild works by Waka Kotahi and KiwiRail can proceed in a seamless and timely manner. These OiCs will be in place until 31 March 2028.

The OiCs will make temporary changes to approval processes relating to resource consenting, land acquisition and conservation. These are the key approvals for planning and delivering recovery and rebuild works.

Waka Kotahi and KiwiRail will still need to get the approvals required to get started on recovery and rebuild works. The proposed OiCs mean that they will be able to use processes that are simplified or shortened.

Table 2: Proposed temporary changes

Primary legislation	Temporary changes
<p>Resource Management Act 1991</p> <p>Applies to Waka Kotahi and KiwiRail</p>	<p>Temporary changes are proposed to simplify and speed up the resource consent and designation processes. Proposed changes include reducing processing times for resource consents, removing notification requirements, clarifying the level of detail required for consent applications and conducting emergency works, and requiring engagement with affected individuals and/or groups.</p> <p>Other proposals include clarifying that consented activities are controlled activities, outlining the conditions that can be imposed on consents, allowing the agency to decide conditions imposed, and altering appeal rights for approvals granted under the OiC.</p> <p>An environmental management plan approach will be adopted, along with a liaison group approach.</p> <p>A key check and balance will be imposing standardised conditions across all regions to address environmental impacts.</p> <p>The temporary changes will also exempt Waka Kotahi and KiwiRail from Outline Plan of Works requirements.</p> <p>Monitoring and enforcement provisions of the RMA remain unchanged, with these rights remaining with local authorities.</p>
<p>Public Works Act 1981</p> <p>Applies to Waka Kotahi and KiwiRail</p>	<p>Temporary changes are proposed to simplify land acquisition processes and make survey plan and proclamation process and administrative changes. This includes reducing or removing requirements to give notice and limiting rights of objection.</p> <p>KiwiRail will be able to use the simplified land acquisition processes for compulsory acquisition for freehold title only in Awatoto and Esk Valley. This is because of the need to do realignment in these locations as the current route is no longer viable, as well as when taking climate change considerations for rebuild into account. However, any use of these processes will be a last resort.</p>

Primary legislation	Temporary changes
	<p>The intention is for agreement to be reached with owners to avoid the need for compulsory acquisition.</p> <p>Waka Kotahi will only be able to use the simplified land acquisition processes for temporary rights in land for access and occupation required while the recovery works are undertaken. It will need to rely on existing PWA processes if compulsory acquisition for freehold title is required for works undertaken under its proposed OIC.</p> <p>No modification to Te Ture Whenua Maori Act 1993 is proposed as part of these temporary changes. Waka Kotahi and KiwiRail will need to comply with this Act as part of the repair and rebuild works.</p>
<p>Conservation Act 1987 Wildlife Act 1953 Reserves Act 1977</p> <p>Applies to Waka Kotahi and KiwiRail</p>	<p>Temporary changes are proposed to streamline the process to obtain concessions for use of land, and authorisation to take, kill or interact with protected wildlife. A two-tier approach will be taken that distinguishes between in-corridor works with values that trigger the approval process, and near-corridor works.</p> <p>Wildlife Act approvals for works within some areas will be waived in most circumstances.</p> <p>Where approval is required under all three Acts, an abbreviated process will apply, providing certainty on the information required in an application, the processing timeframes, and condition requirements. There will also be modifications to the Reserves Act to enable councils to allow non-compliant temporary uses of council reserves for the purposes of recovery works (e.g. equipment and machinery storage), including restrictions on people entering or remaining on a reserve.</p>
<p>Freshwater Fisheries Regulations 1987</p> <p>Applies to Waka Kotahi and KiwiRail</p>	<p>Temporary changes are proposed to exempt Waka Kotahi and KiwiRail from the setback requirement for taking fish near fish traps. Proposed changes include a processing timeframe and approval process to enable prompt recovery works in relation to structures that may impede fish passage.</p>
<p>Railways Act 2005</p> <p>Applies to KiwiRail</p>	<p>Temporary changes are proposed that will make it easier for KiwiRail to trim or remove trees and hedges, lower fences and/or walls, and implement measures to protect land where rail infrastructure is located. The right of entry for existing rail infrastructure will be broadened and will apply to all existing infrastructure and enable its repair, upgrade, and rebuild.</p>
<p>New Zealand Railways Corporation Act 1981</p> <p>Applies to KiwiRail</p>	<p>Temporary changes are proposed that will make it easier for KiwiRail to cease, withdraw or reduce services on a railway line when doing repair and recovery works. Other modifications include making it easier for KiwiRail to get owners to trim or remove trees and hedges, and close branch lines and sidings.</p>

The OiC for Waka Kotahi is unlikely to address all the approvals required for the recovery and rebuild works. The Ministry continues to work with Waka Kotahi to ascertain any requirements for a future OiC and what that might enable. If a future OiC is proposed, it will be subject to its own future engagement process; however we draw this to your attention now for your awareness and to avoid any future confusion.

6 Key checks and balances have been maintained

A key consideration for the proposed OiCs is the importance of balancing the need for speed and certainty for recovery and rebuild works, with protecting the rights and protections provided by the primary legislation that are proposed to be modified.

The Ministry is not proposing to remove any existing rights and protections. The following will be retained:

- engagement requirements with iwi, hapū, Māori and affected stakeholders
- consent or approvals for works are still required
- the need to provide the necessary detail to ensure an application can be robustly evaluated
- conditions remain able to be imposed on approvals
- compliance monitoring and enforcement powers remain with Councils

Requirements will largely be shortened or replaced with simpler processes.

7 Upholding Māori rights and interests is an important consideration

Restoring access to, and providing a safe and resilient transport network for, Māori populations as soon as possible is a key priority for transport agencies.

Waka Kotahi, KiwiRail, the Department of Conservation and local authorities will still need to engage with iwi, hapū and Māori in relation to any potential impacts on public, private and Māori owned land, Treaty settlements and cultural values. The proposed OiCs will not modify Acts including the Te Ture Whenua Maori Act 1993, and therefore those existing obligations and processes remain. No temporary changes are proposed to key provisions in the primary legislation covered by the OiCs that provide for Te Tiriti and Crown obligations.

Relevant rights and protections for Māori that will need to be upheld in any specific area will become apparent when the temporary changes are implemented in that area. Examples include:

- culturally significant areas as defined in section 331B(7) of the Resource Management Act 1991
- protected and available rights and interests under the Marine and Coastal Area (Takutai Moana) Act 2011 and the Nga Rohe Moana o Nga Hapu o Ngati Porou Act 2019
- notification requirements under section 95B of the Resource Management Act 1991

- for protected customary rights groups, customary marine title groups, and post settlement governance entities with statutory acknowledgements.

It will also be important that the framework the OiCs establish ensures Māori rights and interests are upheld when doing the recovery and repair works and addresses future implementation challenges. This includes giving consideration to absentee owners and ungoverned land affected by proposed works. Engaging with only local iwi on a particular parcel of land does not account for the array of different Māori interests, and therefore clarity on how this can be addressed through implementation will be key.

8 Meeting the purpose of the Recovery Act

The proposals outlined above meet the purpose of the Recovery Act as set out in section 3(1) as it will assist communities and councils to focus on planning, rebuilding, and recovery by:

- supporting the rebuilding of state highway and rail infrastructure
- reconnecting communities to whānau, employment, education, and other key services
- minimising disruption to the supply chain and key sectors of the economy
- ensuring the safety and resilience of state highway and rail infrastructure
- facilitating coordinated recovery and rebuild efforts for short, medium, and long-term recovery.

9 How to provide feedback and next steps

We invite you to provide feedback on these proposals, which will be provided to the review panel considering these OiCs under the Recovery Act. It will also inform final advice to Ministers on the temporary law changes in the OiCs.

Please email your feedback to transportrecovery@transport.govt.nz by **11:59pm on Monday 10 July 2023**.

We are keen to know:

1. What are your views whether the OiCs will achieve their intended objectives to support the repair and recovery of the Waka Kotahi and KiwiRail land transport networks?
2. Are there any changes you would like to see in the OiC proposing streamlined LTMA planning and funding processes?
3. Are there any specific requirements you think the two OiCs supporting Waka Kotahi and KiwiRail to undertake recovery and rebuild works need to provide for?

4. Please provide us with any other views or feedback on the proposed OiCs.

The Ministry will also run a series of online hui for iwi, hapū and Māori in regions affected by the severe weather events, and local authorities in areas covered by the proposed OiCs.

We are aware other government agencies are engaging on other OiCs at a similar time. Where possible, we are looking to work alongside each other as much as possible.

Annex 1: Location of damaged state highway and rail infrastructure

This following detail outlines the location of the damaged road and rail infrastructure to be covered by the OiCs. This is not a complete list of all damage sustained following the severe weather events. It is the locations where existing approval processes will not sufficiently enable the repair and rebuild works.

Table 3 Damaged state highway network sections

Relevant Region	Significance and scale of issue
Hawkes Bay Region	<p>SH2 – Waikare River Bridge to district boundary (about 107km) - earthworks and associated works in watercourses, vegetation clearance, stormwater management</p> <p>SH2 – SH5 intersection through to Waikare Bridge (55km) – earthworks and associated works in watercourses, vegetation clearance, stormwater management</p> <p>SH38 – Wairoa to Tuai (47km) - earthworks and associated works in watercourses, vegetation clearance, stormwater management</p> <p>SH5 – intersection with SH2 to Pohokura Road (76km) - earthworks and associated works in watercourses, vegetation clearance, stormwater management</p> <p>SH50 – Mangamate Stream / Tukipo Stream / Makaretu River / Glencoe Gorge / Manga-o-nuku (each about 250m) – earthworks and associated works in watercourses, vegetation clearance, stormwater management</p> <p>SH51 – Tutaekuri Bridge (1km) – earthworks and associated works in watercourses, vegetation clearance, stormwater management</p>
Gisborne	<p>SH35 – Cemetery Road to Tokomaru township (8.5km) – earthworks and associated works in watercourses, vegetation clearance, stormwater management, coastal works</p> <p>SH35 – Te Puia to Makarika Road (14km) - earthworks and associated works in watercourses, vegetation clearance, stormwater management</p> <p>SH35 – Poroporo Road to Whakaangi Road (13km), earthworks and associated works in watercourses, vegetation clearance, stormwater management</p> <p>SH35 – Turihaua (1.5km) – earthworks and associated works in watercourses, vegetation clearance, stormwater management, coastal works</p> <p>SH35 – Hikuwai Bridge (500m) - earthworks and associated works in watercourses, vegetation clearance, stormwater management</p> <p>SH2 – Waihuka Road to Te Wera Road (31km) earthworks and associated works in watercourses, vegetation clearance, stormwater management, coastal works</p>
Waikato Region	<p>SH25A – Taparahi (200m) – earthworks and associated works in watercourses, vegetation clearance, stormwater management</p> <p>SH25A – Troups Falls (100m) earthworks and associated works in watercourses, vegetation clearance, stormwater management</p> <p>SH25 – earthworks and associated works in watercourses, vegetation clearance, stormwater management, coastal works at various locations along the route</p> <p>SH2 – Karangahake Gorge (100m) - earthworks and associated vegetation clearance, stormwater management, erosion protection</p>

	SH27 – Kiahere (1km) - earthworks and associated works in watercourses, vegetation clearance, stormwater management
Auckland	SH1 – Puhoi to Dome Valley (10km) – earthworks and associated works in watercourses, vegetation clearance, stormwater management SH1 – Puhoi / Pohuehue (1km) – earthworks and vegetation clearance SH1 – South of Warkworth (500m) – earthworks and associated works in watercourses, vegetation clearance, stormwater management
Northland Region	SH1 – Brynderwyns (15km) – earthworks and associated works in watercourses, vegetation clearance, stormwater management SH10 – Waitangi River Bridge (100m) - earthworks and associated works in watercourses, vegetation clearance, stormwater management

Table 4 Damaged rail network sections

Region	Significance and scale of issue
Manawatu – Wanganui Region	Palmerston North to Gisborne Line (PNGL): multiple damage sites requiring slip remediation between Dannevirke and the Kopua Viaduct (22km), involving earthworks and associated works in watercourses, vegetation clearance, stormwater management and coastal activities.
Hawkes Bay Region	PNGL: mass and multiple damage sites from the south of Hastings through to Wairoa (104km) involving earthworks and associated works in watercourses, vegetation clearance, stormwater management.
	PNGL: Wairoa to regional boundary (51km) has not been inspected yet, KiwiRail has responsibility to make safe, involving earthworks and associated works in watercourses, vegetation clearance, stormwater management. Works at Awatoto and Eskdale Valley to include off-corridor recovery works.
Gisborne	PNGL: full distance in Gisborne Region (44km) inspection pending, although not operational KiwiRail has responsibility to make safe involving earthworks and associated works in watercourses, vegetation clearance, stormwater management
Auckland	North Auckland Line (NAL): Kanohi to regional boundary (47km) slip remediation, mud spot/over slip remediation and remediation at two bridges, involving earthworks and associated works in watercourses, vegetation clearance, stormwater management and coastal activities
Northland Region	NAL: regional boundary to south of Whangārei (67km) slip remediation, mud spot/over slip remediation involving earthworks and associated works in watercourses, vegetation clearance, stormwater management and coastal activities

