

## Decision of Kaikōrua District Council

Under the Hurunui/Kaikōura Earthquakes Recovery (Coastal Route and Other Matters) Order 2016 and Resource Management Act 1991

<b>Application Number:</b>	LU-2017-1456-00
<b>Applicant:</b>	KiwiRail Holdings Limited
<b>Consent Sought:</b>	Land Use – Restoration of Coastal Route
<b>Location of Activity:</b>	Coastal Route South of Kaikōura – Territorial Boundary
<b>Lapse Date:</b>	Infinite duration

### 1. Background

The November 2016 earthquake event resulted in significant damage across North Canterbury, Marlborough and Wellington. State Highway One and the Main North Railway Line along the Kaikōura Coast were rendered impassable as a result of slippage and uplift. The North Canterbury Transport Infrastructure Recovery (NCTIR) Alliance was formed to lead infrastructure recovery efforts. The consent application to which this decision relates was prepared by NCTIR and submitted on behalf of Kiwi Rail.

The Hurunui/ Kaikōura Earthquakes Recovery Act 2016 was developed with a purpose of assisting earthquake affected areas and its councils and communities respond to and recover from the impacts of the earthquake event. This Act included a mechanism to develop Orders in Council that facilitate recovery.

The Hurunui/ Kaikōura Earthquakes Recovery (Restoration of Coastal Route) Order 2016 (the Order) came into force on 23<sup>rd</sup> December 2016. It modifies the Resource Management Act 1991 (RMA) for the purposes of restoration work.

Restoration work as defined in the Order:

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

The Order modifies various provisions of the RMA for the purposes of restoration work that would require resource consent under sections 9, 12, 13, 14 or 15 of the RMA and that has any status other than that of a permitted activity under a relevant district or regional plans or a national environmental standard. In particular the Order modifies section 87A(2) to (6) of the RMA such that restoration work done by or on behalf of an agency is a controlled activity and the consent authority must grant resource consent for the restoration work in accordance with section 87A(2)(a) RMA.

As the content of this application is deemed to be restoration work this resource consent has been processed in accordance with the provisions of the Order and the modifications it makes to the RMA resource consent process. The activity is therefore a controlled activity. In accordance with Clause 6(4) of the Order Councils control for the purposes of section 87A(2)(b) are restricted to the following matters:

- (a) the management of the effects of the activity on –*
  - i. areas of significant indigenous vegetation and significant habitats of indigenous fauna;*
  - ii. fresh water quality*
  - iii. heritage, cultural and archaeological values;*
  - iv. landscape, natural character, and visual amenity;*
  - v. coastal processes;*
  - vi. coastal water quality;*
  - vii. marine mammals and seabirds;*
- (b) the management of construction work, stormwater, marine biosecurity, hazardous substances, spills, artificial lighting, dust, noise and vibration.*

## **2. Consent application lodgement and process**

This application for resource consent was lodged on 21 March 2017. One application was received for restoration work, however this was a joint application made on behalf of both Kiwi Rail and the New Zealand Transport Agency (NZTA). It was requested that two separate consents be processed and issued to each agency for their respective restoration works. This consent is to be issued to Kiwi Rail covering restoration of the Railway. The associated consent, reference LU-2017-1455-00 is to be issued to NZTA and covers restoration of the State Highway.

The application received was receipted in accordance with Clause 7 of the Order (which modifies section 88 of the RMA). The clause sets out the information which must be included in an application for resource consent for restoration work. Subclause (3) states that section 88(3) to (5) do not apply, therefore the application cannot be returned as incomplete.

Clause 11(2) of the Order states that where an application is received prior to 1 April 2017, the applying Agency may choose to proceed under either clauses 8 to 10 of the Order or under Clause 11(3) to (10). A key distinction between the Clauses is notification. Clauses 8 to 10 require invitations for comment be sent by Council to specified persons. Clause 11 precludes the consultation process and requires the consent to be processed without public or limited notification.

This application was received prior to 1 April 2017 and the applicant has elected that the application be processed under the expedited process specified in Clause 11(3) to (10). In accordance with the Clause 11 process Order the application cannot be notified.

Clause 11 of the Order modifies sections 95-99A, 104, 104A, 105, 107(2), 108 and 115 of the RMA.

Under Clause 11(4) of the Order, which modifies section 108 of the RMA, a consent authority must grant consent subject to the conditions set out in Schedule 1 of the Order that relate to the restoration work, or with any amendment to the Schedule 1 conditions recommended by the consent authority under Clause 11(4) that is accepted by the agency, or alternative amendments identified by the Agency.

Following consideration of the application Kaikōura District Council recommended amendments to a number of conditions. The recommended amendments were suggested for the purposes of clarifying roles, clarifying responsibilities and ensuring appropriate consideration, monitoring and mitigation of environmental affects was undertaken. Kaikōura District Council also recommended

the inclusion of a new clause to ensure environmental effects on landscape values were appropriately considered and mitigated. Kiwi Rail (as the Agency) considered these recommended amendments and provided their decision on 27<sup>th</sup> March 2017.

Clause 11(9) sets out the time limits that apply for deciding the application for the purposes of section 115 RMA, and Clause 11(10) states that time limits cannot be extended or deferred in any way.

Section 104(A) of the RMA sets out the process for determining an application for a controlled activity:

***104A Determination of applications for controlled activities***

*After considering an application for a resource consent for a controlled activity, a consent authority—*

*(a) must grant the resource consent, unless it has insufficient information to determine whether or not the activity is a controlled activity; and*

*(b) may impose conditions on the consent under [section 108](#) only for those matters—*

*(i) over which control is reserved in national environmental standards or other regulations; or*

*(ii) over which it has reserved its control in its plan or proposed plan.*

The Order (Clause 8(2)(c)) further sets out that the consent authority need not have regard to the matters in section 104(1)(b) of the RMA when considering the application, that is:

*Section 104(1)(b) - any relevant provisions of—*

*(i) a national environmental standard:*

*(ii) other regulations:*

*(iii) a national policy statement:*

*(iv) a New Zealand coastal policy statement:*

*(v) a regional policy statement or proposed regional policy statement:*

*(vi) a plan or proposed plan; ...*

Clause 11 of the order modifies section 108 RMA, such that the consent must be granted on the conditions set out in Schedule 1 that relate to the restoration work, or as amended under subclauses 4 or 7. While Kaikōura District Council have had the opportunity to recommended changes to the schedule one conditions these have largely been rejected.

Considering the matters in Part 2 of the RMA in accordance with section 104 RMA and have had regard to the actual and potential effects on the environment. Irrespective of those modifications to Sections 104 and 108 under the Order mean that Council is unable to impose conditions other than those in Schedule 1 of the Order, and the amendments agreed to by the applicant.

### **3. Summary**

The Kaikōura District Council fully understand the need for the unique process and departure from the standard RMA process. The current legislation restricts aspects of Councils control and it is understood this consent will not be seen as an endpoint. Rather a broad-brush stroke and the detailed picture which would be expected in the typical resource management process is still to follow. The plans submitted are referred to as high-level concept drawings. The final picture of the design will be informed by ongoing discussion occurring through a variety of mechanisms such as the Restoration Liaison Group (RLG).

This fluid process should serve New Zealand and the Kaikōura community well provided matters identified in discussion are reflected into the detailed design. If more time was available Council is certain that aspects such as the New Zealand Design Protocol would have been fleshed out within the application. However, the speed necessary to get New Zealand up and running may have seen such matters considered rather than detailed in the application.

Councils suggested amendments were aimed to ensure conditions reflected the desire for a comprehensive design and build while allowing the process to be fluid. The final decision on inclusions or exclusion of recommend amendments is beyond the control of this Council.

#### 4. Decision

##### Notification Decision

Given the scale of the works and sensitivity of the receiving environment, under a normal RMA process these applications would be subject to public notification on the basis of adverse effects on the environment being more than minor (s95(2)(a) RMA) and/or because of special circumstances (s95(4) RMA).

Clause 11(3) of the Hurunui/ Kaikōura Earthquakes Recovery (Coastal Route and Other Matters) Order 2016 however, specifies that these applications must not be publically notified or given limited notification. Given this restriction the application must proceed to substantive decision without either public or limited notification.

##### Substantive Decision

### **GRANTED**

In accordance with Clause 11 of the Hurunui/Kaikōura Earthquakes Recovery (Coastal route and Other matters) Order 2016 and pursuant to sections 104, 104A and 108 of the Resource Management Act 1991 consent is granted to carry out restoration work on the coastal route south of Kaikōura as set out in the application LU-2017-1456-00 **subject** to the amended scheduled one conditions of the Hurunui/Kaikōura Earthquakes Recovery (Coastal route and Other matters) Order 2016 (appendix I).



Date: 28/03/2017

Matt Hoggard, Planning and Building Manager

*Acting under delegated authority by the Kaikōura District Council*

## Appendix I - Conditions

### 1) Authorised activities

(1) These conditions apply to resource consent LU-2017-1456-00 that authorises activities in subclause (2) of the Hurunui/Kaikōura Earthquakes Recovery (Coastal Route and Other Matters) Order 2016 that it is necessary or desirable to undertake, because of or in connection with the Hurunui/Kaikōura earthquakes, to—

(a) repair and rebuild the coastal route; and

(c) enhance the safety and improve the resilience of the coastal route.

(2) Resource consent LU-2017-1456-00 authorises restoration work occurring on the coastal route as defined in the Hurunui/Kaikōura Earthquakes Recovery (Coastal Route and Other Matters) Order 2016 south of Kaikōura (with-in the Kaikōura district boundaries).

(3) The activities are all temporary and permanent activities for land transport requiring consent under section 9 of the RMA.

(4) The final location of any structure or reclamation must be provided to the relevant regional council and territorial authority after the activities are completed.

### 2) Definitions

In these conditions:

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

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

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

**Council** means,—

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

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

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

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

**working day** has the meaning given in clause 3(1) of the Hurunui/Kaikōura Earthquakes Recovery (Coastal Route and Other Matters) Order 2016.

### 3) Iwi Adviser

(1) Before starting construction works, the consent holder must invite each of the relevant mana whenua (for the particular works) to appoint 1 Iwi Adviser (collectively, the Iwi Adviser) to undertake the roles and responsibilities as set out in these conditions.

(2) The Iwi Adviser will be supported by a team of cultural monitors, mandated by the relevant mana whenua, who can provide on-site guidance to the consent holder to enable effective management of cultural indicators.

(3) The consent holder must invite the Iwi Adviser to provide cultural indicators covering traditional associations, mahinga kai, cultural stream health, and cultural heritage.

(4) The consent holder must take into account any such cultural indicators in the preparation of any plans required under these conditions.

(5) The requirements in this clause are considered to be satisfied if, at any time, the appointed Iwi Adviser is unavailable or unwilling to undertake the roles and responsibilities set out in these conditions.

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

(1) At least 20 working days before starting construction works, the consent holder must invite representatives (who have authority to make decisions on behalf of their organisation) from the Council and any other relevant local authority, Heritage New Zealand Pouhere Taonga, the Department of Conservation, relevant mana whenua, and the Kaikōura Marine Guardians to be part of a restoration liaison group.

(2) The purpose of the restoration liaison group is to help inform the design, management, and monitoring of all construction works.

(3) The consent holder must—

- (a) prepare terms of reference for the restoration liaison group to be discussed and agreed (by consensus, if possible) at the group's first meeting; and
- (b) keep a record of any comments provided by the restoration liaison group with respect to the design, management, and monitoring of the construction works; and
- (c) provide an explanation to the restoration liaison group of how the comments have been taken into account.

(4) If the restoration liaison group cannot, by consensus, agree on the terms of reference at its first meeting, the terms of reference must be determined by majority vote (with 1 vote for each organisation represented on the group, including the consent holder). If votes on the terms of reference are tied, the consent holder has a casting vote.

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

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

(2) The CEMP must include—

- (a) the roles and responsibilities of construction management staff, including the overall manager responsible for the control of erosion and sediment;
- (b) a description of the training and education programme that will be implemented to ensure compliance with conditions;
- (c) procedures for hazard, including fire hazard, identification, and control;
- (d) the details of at least 2 emergency contacts and responders who must be contactable 24 hours 7 days a week during construction and have authority to authorise immediate response actions;
- (e) the contact details of any construction staff living on site during the project construction;
- (f) methods for responding to queries and complaints;
- (g) methods for amending and updating the CEMP as required;
- (h) details of the process to identify, record, and investigate incidents;
- (i) details of how the project ecological principles will guide environmental outcomes.
- (j) details of how the consent holder will act to ensure that the spread of pests (both flora and fauna) will be avoided or remedied.

(3) At least 3 working days before finalising the CEMP, the consent holder must invite comments from the members of the restoration liaison group and must have regard to any such comments when finalising the CEMP.

- (4) The consent holder must—
- (a) implement the CEMP for the duration of construction works; and
  - (b) provide a copy of the CEMP to the Council for information before starting construction works.

### *Earthworks*

#### **6) Earthworks**

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

- (a) minimise the volume and area of the proposed earthworks required for the project through the design of batter slopes appropriate to expected soil types and geology:
- (b) maximise the effectiveness of erosion and sediment control measures associated with earthworks by minimising potential for sediment generation and sediment yield:
- (c) minimise (and, having regard to the purpose of the Hurunui/Kaikōura Earthquakes Recovery Act 2016, take all reasonable steps in the circumstances to avoid) adverse effects on freshwater and marine water environments within or beyond the project boundary, with particular regard to reducing opportunities for the project to generate sediment:
- (d) minimise (and, having regard to the purpose of the Hurunui/Kaikōura Earthquakes Recovery Act 2016, take all reasonable steps in the circumstances to avoid) effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna within the project boundary.

#### **7) Erosion and Sediment Control Plan**

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

(2) The ESCP must specify the following:

##### General

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

##### Responsibilities

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

##### Incident management

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

##### Visual assessment

- (i) a procedure for ongoing visual assessments of all erosion and sediment control measures, including details of analysis of trends in erosion and sediment control performance and consequential erosion and sediment control amendments.

(3) If any erosion and sediment control measure fails, the consent holder must engage a suitably qualified and experienced ecologist to undertake an ecological survey of any affected areas as soon as is reasonably practicable having regard to the purpose of the Hurunui/Kaikōura Earthquakes Recovery Act 2016. In the event that significant adverse effects are identified by such a survey, the



consent holder, in consultation with the Council, must develop and implement appropriate remedial measures (which may include offsets) commensurate to the scale of the effects.

- (4) At least 5 working days before starting construction works, the consent holder must,—
- (a) if the ESCP is prepared in accordance with the New Zealand Transport Agency's Erosion and Sediment Control Guidelines for State Highway Infrastructure (September 2014), submit a hard copy of the ESCP to the Council for its information; or
  - (b) if the ESCP is not prepared in accordance with those guidelines, submit a hard copy of the ESCP to the Council for certification that it meets the requirements of subclauses (1) and (2). If the consent holder has not received any response from the Council within 5 working days of submitting the ESCP, the ESCP is deemed to have been certified.

(5) The consent holder must implement the ESCP submitted in accordance with subclause (4)(a), or certified in accordance with subclause (4)(b), for the duration of the construction works.  
Erosion and sediment control criteria

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

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

## **8) Dust Management**

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

## **9) Contaminated land**

(1) Subclauses (2) and (3) apply if the consent holder undertakes earthworks on contaminated land.

(2) The consent holder must dispose of any material removed from a site identified as contaminated land at a facility authorised to receive material of that kind.

- (3) The consent holder must take all practicable measures to—
- (a) control the discharge of soil and stormwater from contaminated land to waterways;
  - (b) maintain the integrity of any structure designed to contain contaminated soil or other contaminated materials;
  - (c) reinstate the soil to an erosion resistant state at the completion of the earthworks.

(4) In this clause, contaminated land means land to which the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 would apply.

## **10) Construction noise**

(1) Construction noise must comply, as far as practicable, with the long-term duration limits provided in Table 2 of NZS 6803:1999.

(2) The consent holder must take all practicable measures to reduce levels of noise from plant and equipment operating onsite during construction, including the generation of underwater noise.

## **11) Ecology**

### *Development of project ecological principles*

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

(2) Before starting construction works, the consent holder must develop ecological principles informed by the cultural indicators to guide the project design and environmental outcomes.

(3) The consent holder must—

- (a) provide a draft copy of the ecological principles to the members of the restoration liaison group for comment:
- (b) if any comments are received within 3 working days after the draft is provided to the members of the restoration liaison group, have regard to those comments when finalising the ecological principles:
- (c) when finalising the ecological principles, the consent holder must note any comments received from members of the restoration liaison group, along with an explanation of how those comments have been taken into account.

(4) The consent holder must take the ecological principles into account when undertaking the construction works.

#### *Ecological scoping survey*

(5) Before starting construction works, a suitably qualified and experienced ecologist (or ecologists) must, together with a suitably qualified and experienced ecologist nominated by Te Rūnanga o Ngāi Tahu (the **Ngāi Tahu project ecologist**), complete an ecological scoping survey of the relevant construction works area, and adjacent areas (within the designation), to identify any at risk or threatened flora or fauna (as defined in the current version of the New Zealand Threat Classification System), any taonga species (as defined in section 287 of the Ngai Tahu Claims Settlement Act 1998), and any marine mammals (as defined in the Marine Mammals Protection Act 1978) that may be significantly adversely affected during or as a result of construction.

(6) The ecological scoping survey must be carried out in general accordance with the Ecological Impact Assessment Guidelines (Environment Institute of Australia and New Zealand, March 2015).

(7) The consent holder must provide a copy of the final ecological scoping survey to each member of the restoration liaison group.

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

(8) If any flora or fauna (including taonga species and marine mammals) referred to in subclause (5) are identified, the project ecologist, in association with the wider project team, must develop and implement measures to avoid, as far as practicable (having regard to the purpose of the Hurunui/Kaikōura Earthquakes Recovery Act 2016), or to minimise, any adverse effects on those flora or fauna, taking into account the project ecological principles.

(9) Any measures taken under subclause (8) must be monitored at regular intervals during the term of construction and reported every 2 months together with any recommendations by the project ecologist, working with the Iwi Adviser, to change those measures.

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

#### *Reclamation*

### **12) Design**

(1) The consent holder must provide to the Council design drawings of any area of proposed reclamation (including associated permanent CMA occupation and permanent structures) at least 10 working days before the proposed date of commencement of the construction of that reclamation or structure.

- (2) Any reclamation and construction methodology must be designed by a suitably qualified and experienced engineer and a suitably qualified and experienced ecologist, and must consider—
- (a) the risk profile of the area, including soil and geology characteristics, geographic form, and receiving environment:
  - (b) operational safety and resilience:
  - (c) opportunities for tourism, for example, viewing areas:
  - (d) the effects of climate change:
  - (e) any opportunities to enhance public access to and along the CMA:
  - (f) any opportunities to enhance paua and other marine species' habitat:
  - (g) the project ecological principles:
  - (h) landscape and amenity values.

(3) Any reclamation must be carried out in accordance with an ESCP prepared in accordance with condition 7.

### **13) Construction machinery and maintenance**

(1) All vehicles or equipment entering the CMA during the exercise of the consent must be in a good state of repair and free of any fuel or oil leaks.

(2) No machinery may be left within the intertidal zone during high-tide periods in a position where it could come into contact with coastal water.

(3) The consent holder must ensure that an oil spill response kit is held on site, by the person who is to carry out the work, during the period of construction.

(4) Fuelling and maintenance of plant and equipment used during any construction or maintenance work must not be carried out in the CMA or in any other location near the site where fuel or oil could enter the coastal marine area. If an accidental spillage to land occurs, all contaminated soil must be collected and removed to a disposal site that is authorised to receive such material.

(5) The consent holder must, on becoming aware that any contaminant associated with the consent holder's operations has escaped otherwise than in conformity with the consent,—

(a) immediately take such action or carry out any work that may be necessary to stop or contain the escape; and

(b) immediately notify the following, by telephone, of the escape:

(i) the Council's monitoring manager; and

(ii) the Department of Conservation, if there is imminent risk from the escape of contaminant of adverse effects on any at risk or threatened species, or on any marine mammals; and

(c) take all reasonable steps, having regard to the purpose of the Hurunui/ Kaikōura Earthquakes Recovery Act 2016, to remedy or mitigate any adverse effects on the environment resulting from the escape.

### **15) Review of conditions**

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

(a) deal with any adverse effect on the environment that may arise from the exercise of the consent and that is appropriate to deal with at a later stage:

(b) review the adequacy of any monitoring.