

Decision of Kaikōura District Council

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

Application Number:	LU-2017-1492-00
Applicant:	KiwiRail Holdings Limited
Consent Sought:	Land Use – Restoration of Coastal Route
Location of Activity:	Coastal Route
Lapse Date:	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 (MNL) 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 KiwiRail.

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 (Coastal Route and Other Matters) Order 2016 (the Order) came into force on 23rd 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 8:16 pm of 21 November 2017. One application was received for restoration work, however this was a joint application made on behalf of both the New Zealand Transport Agency (NZTA) and KiwiRail. 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 KiwiRail covering restoration of the MNL. The associated consent, LU-2017-1491-00 is to be issued to NZTA and covers restoration of State Highway One.

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 or the application is made for works in an area that either a current state of emergency or transition period applies 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 after the April deadline, however at the time of lodgement the Kaikōura District was in a state of transition and KiwiRail (as the Agency) 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 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.

Although the legislation does not required Kaikōura District Council staff had requested a pre-application meeting prior to submitting applications. In this case a meeting occurred at 11:00am on 22 November 2017. Key aspects discussed include:

- Impact on adjoining property owners as a result of noise associated with operation of sites and traffic movements, partially around adjoin dwellings with rural amenity, the impact on the Lovers Lane area was used as an example.
- The location of fill within Stoney Creek given the proximity to ‘Elms’ Pa and the approximately to the medium risk areas identified in the desktop assessment provided with the application.
- Ensuring Kahuitara River sites works does not result in additional and unforeseen impacts in relation to flooding.

Meaningful discussion occurred around these aspects and although standards consent process would result in additional restrictions in these areas current legislation prevents this from occurring.

Following consideration of the application Kaikōura District Council did not make any recommendations under Clause 11(5). The earlier processes have determined a set of conditions that Kaikōura District Council has accepted as appropriate for this application also.

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 has had the opportunity to recommend changes to the schedule one conditions it has opted to agree to the amended schedule one conditions volunteered by the Agency.

Considering the matters in Part 2 of the RMA in accordance with section 104 of RMA and having 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 understands 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 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 and the NZTA Urban Design Guidelines 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.

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 as set out in the application LU-2017-1492-00 **subject** to the schedule one conditions of the Hurunui/Kaikōura Earthquakes Recovery (Coastal Route and Other Matters) Order 2016.



Date: 28 November 2017

Matt Hoggard
Planning and Building Manager

Acting under delegated authority by the Kaikōura District Council