



Flooding – Works in Waterways or Land in Emergency Situations – Landowners Guide

The recent severe storm/weather event affecting the Marlborough region has led to damage to roads, other important infrastructure, properties, the deposition of sediment, gravels, or debris, and changes in river paths due to flooding.

This guide is designed to provide information to anyone considering undertaking works on land or within or near a waterway to mitigate the effect of this event.

Damage to your land and waterways

In the event of a regional emergency such as flooding, it may be necessary to undertake immediate works to reinstate an area of property, for example, to allow passage or ensure the safety of people or emergency services. The Resource Management Act 1991 (RMA) provides defences for persons undertaking works which are unlawful but “necessary” to prevent serious damage to property or to avoid actual or likely adverse effects on the environment from events such as natural disasters.

As a landowner or person considering such an activity on a property, you need to consider if the works are “necessary” and whether they are reasonable in the circumstances.

The considerations are fourfold, meaning all these aspects are required:

- “Necessary”; **and**
- Relates to an emergency in terms of the RMA; **and**
- Reasonable in the circumstances; **and**
- Any effect of the action or event were adequately mitigated or remedied by the person completing the works.

Necessity and emergencies as defined in the RMA include:

- Saving or protecting life or health, or
- Preventing serious damage to property; or
- To avoid an actual or likely adverse effect on the environment.

What can you do in response to natural disaster impacts on your property?

If you believe that works on your property are required, you need to:

1. Consider how “necessary” the works on your property are – is the situation imminent?
2. Consider if the works would likely require resource consent under normal circumstances. Most earthwork or river protection activities in or within 8 metres of a waterway require resource consent.
3. If you are unsure about (2), seek advice from your own planning agent or the Council's duty planner service at dutyplanner@marlborough.govt.nz or phone 03 520 7400.
4. Consider the adverse effects on the environment when completing the works and what you can do to mitigate those effects. The Council's Environmental Science and Monitoring team can assist you; please email flood.damage@marlborough.govt.nz.
5. It is encouraged that you discuss your proposed works with the Council's Compliance team prior to commencement at compliance@marlborough.govt.nz or phone 03 520 7400.

Note – The local authority (Marlborough District Council Compliance team) has experience and knowledge in managing activities and determining whether they fall within an emergency or a “necessary” situation.

When completing works, it is helpful to keep records of the situation prior to undertaking any work and what has occurred during the works, particularly in relation to effects on the environment. This documentation can support the necessity of the works. Records may include:

- Written documentation.
- Photographic and digital imagery.
- Have in place a means of predicting, or evaluating and monitoring the effects of the work, to establish whether effects will continue.

Questions you should ask yourself prior to any works

Why do you want to do the work?

- Is it required to save or protect a life?
- Will it prevent 'serious damage to property'?
- Is it required to avoid an actual or likely adverse effect on the environment?

What is it for/is it reasonable?

- Is it required, or does it go beyond the scope of 'immediacy'?
- Can it wait for a consent application? If not, why not?
- The longer the time post-event, the greater the likelihood that the works are not protected by the defence provisions of the RMA.

Who is doing the works?

- Who is authorising the work?
- Who is completing the works? Are they aware of the reasons, regional rules, and RMA regulations?

What are the effects on the environment going to be?

- What is occurring upstream or downstream?
- Will it cause sediment discharge or loss?
- What mitigation actions will you or have you put in place (document and photograph)?
- Will your works affect the neighbour, a river, ecosystem, or a coastal environment?

The council may require a retrospective resource consent if:

- The adverse effects for the works are on-going; or
- A new structure or change in contours of land is in place; or
- The works were of a significant nature or size.

If you have doubts or are unsure about the works you wish to undertake, then it is advised the works are not completed until you either contact the Marlborough District Council or seek professional advice.

Any queries for proposed works can be directed to the duty compliance officer for discussion.

For any further information you can contact:

Marlborough District Council

Compliance Team

Ph: (03) 520 7400 (24 hours)