

15 March 2023

Governance and Administration Select Committee Chairperson

via email to: governance.administration@parliament.govt.nz

Submission on the Severe Weather Emergency Legislation Bill

1. We appreciate the opportunity to make an oral submission on this Bill.
2. We SUPPORT the Bill's overall intent and that the Bill will assist in some specific response and recovery activities in the Hawke's Bay region following the devastating impacts of Cyclone Gabrielle.
3. We understand that there will be further legislation introduced to enable many other elements of the substantial recovery efforts required in the coming months. This will be crucial because much of Hawke's Bay Regional Council's 'business as usual' (BAU) programmes have been impacted by Cyclone Gabrielle – many of which are driven by primary or secondary legislation. See **Appendix 1** for some examples.
4. Furthermore, our communities are dealing with the impacts of Cyclone Gabrielle. This has implications for their ability to participate in local government processes over and above prioritising recovery efforts. We do not think it is possible, practical nor appropriate to progress a BAU approach in light of the significant recovery ahead. There is a need to act swiftly. Many of the current legislative requirements and highly prescribed processes pose impediments to swift action commensurate with the recovery challenges in front of us and our communities. We suggest that the required changes to legislation could be made relatively swiftly through Orders in Council once an overarching legislative framework has been established (like what was done post-Canterbury and Hurunui/Kaikoura earthquakes). As an affected region, we fully anticipate a decent opportunity to influence the content of that Bill and provide detailed feedback in due course.
5. Key points we wish to make today are outlined in the following table:

TABLE 1:

Provision in Bill	Support?	Comment
Part 3, Cl 15 [amending LGA to insert s25B]	SUPPORT	Support LGA amendments to enable virtual attendance at meetings, but urge this is made available not just for severe weather and pandemic conditions, but regular business too.
Part 4, Cl 18 [inserting s330AAA]	SUPPORT	Support modification of RMA's requirements for authorities to inform owners/occupiers of land accessed. Support subclause (3) insofar as this applies until 1 April 2025 as recognition of the extensive works required and timeframes for recovery being years – not merely weeks or a few months.
Part 4, Cl 19 [insert s330AA]	SUPPORT IN PART	Support extension of timeframes in this clause, but;

		<p>Suggest a 100WD extension for simply providing “advice of the activity” is excessive. We submit that earlier “advice of the activity” would assist informing other agencies’ actions and decision-making. We anticipate providing “advice of the activity” would not be a burdensome effort. A shortform outlining who, what, where, why and when should suffice. We are clear that the advice is NOT the same as a consent application.</p>
Part 4, Cl 19 [insert s331B and 331C]	SUPPORT IN PART	<p>Support proposed s331B(3) as this would mean currently prohibited activities REMAIN prohibited activities and cannot be ‘deemed permitted activities.’ Prohibitions are made for valid reasons – often for protecting human health. It would be inappropriate for the Bill to simply wipe away those health safeguards, even after devastating weather events.</p> <p>Rural areas in Hawke’s Bay have been severely impacted by Cyclone Gabrielle. We support intention of s331B(2) to enable holders of rural land to do clean-up works and some remedial works. However, we submit that the Bill as proposed is sweeping and leaves too much in the hands of the landowner to decide what is reasonable and proportionate.</p> <p>In terms of s331C’s requirement for an owner or occupier of rural land to give written notice to the consent authority that an activity has been undertaken, we suggest that 60WD for simply providing “notice of the activity” is too generous. We anticipate providing “notice” of the activity would not be a burdensome effort. A shortform outlining who, what, where, why and when should suffice. We are clear that the notice is NOT the same as a consent application.</p>
Part 4, Cl 21 [insert s331B]	AMEND	<p>Amend s331B to ensure that the term “activity” is clearly limited to any activity which falls within scope of ss9, 12, 13, 14 or 15 of the RMA.</p> <p>Amend s331B by adding (6) “the activity will not cause significant adverse effects beyond the boundaries of the owner’s or occupier’s rural land”</p> <p>As above we support rural landowners being able to undertake clean-up works, but this should not be to the detriment of neighbouring properties e.g. silt being deposited into waterways, development of culverts creating flooding issues beyond the boundary.</p>

Part 4, CI 19 [insert s330AA] and Part 4, CI 20 [insert s330C]	AMEND	Amend s330AA and s330C to add the words “and the adverse effects of the activity continue” as per s330A(2) and s330B(3). It would be helpful if the provision clarified the words “ <i>and the adverse effects of the activity continue</i> ” in the context of the extended timeframe. Does the requirement to notify the council and seek consent only apply if the effects continue for the extended 100 and 160 day periods respectively, or would a shorter time period of continuation trigger that requirement? Or is it continuance beyond the consent period?
Part 4, CI 21 [inserts s331F]	AMEND	Suggest subsection (3) be amended to also include references to national environmental standards or regulations alongside references to rules in district plans and regional plans.
Part 4, CI 21 [insert 331A]	SUPPORT IN PART	We support the definition of rural land, however suggest that there could be additional provision for other landowners who may not be located in rural production zones specifically affected. For instance in Hawke’s Bay there has been significant impact on Awatoto commercial/industrial land and marae/papakāinga who might benefit from undertaking emergency or remedial measures.
Land access matters	NEW	While Bill proposes to insert new s330AAA into RMA in instances where landowner/occupier cannot be contacted, we suggest the Bill also needs to confirm that those agencies can access land to undertake emergency works even in instances where the owner/occupier can be contacted, but refuses to give permission.
RMA timeframes	NEW	There is a range of other timing-related RMA obligations that we would want to get (or give) relief from. For example, consent processing deadlines or s124 lapsing timeframes. S37 RMA may apply in some circumstances where the consent authority has discretionary powers. But in instances where the consent authority does not have discretion, we suggest that the could legislation give automatic extensions, thus reducing administrative burdens and ‘red-tape.’
Prosecution timeframes	NEW	We suggest legislation needs to extend timeframes for laying prosecution charges in affected areas. Some of the activities where prosecution proceedings are warranted may have occurred prior to Cyclone Gabrielle, yet the ‘clock continues to tick’ as normal.
Annual Plan, Annual Report and LTP	NEW	There are no proposed amendments to the Local Government Act with respect to Annual Plan consultation and adoption. Consideration needs to be given to what statutory relief could be

consultation and adoption		provided to Councils e.g. changes to deadlines for adoption, modify s95(2A) to allow a no-consultation approach due to uncertainty. Given its absence here we anticipate this will be addressed in a separate recovery Bill soon.
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Thank you for the opportunity to make an oral submission on this Bill.

Ngā mihi nui,



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APPENDIX 1 – Examples of legislation driving HBRC’s work programmes

Resource Management Act 1991

- NPS-Freshwater Management 2020
- NPS-Urban Development 2020
- Freshwater farm planning
- NPS-Highly Productive Land 2022
- Consenting times
- Compliance and enforcement timeframes
- Water take compliance
- Water metering regulations
- plus various national environmental standards and regulations

Local Government Act 2002

- Council Bylaws
- Long Term and Annual Plan processes
- Special consultative procedure
- Annual Report

Rating Valuations Act 1998

Land Transport Management Act 2003

- Regional Land Transport Plan and Public Transport Plan

Other

- Waka Kotahi funding bids.