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## **'STRENGTHENING EMERGENCY MANAGEMENT LEGISLATION' DISCUSSION DOCUMENT - SUBMISSION ON BEHALF OF HAWKE'S BAY REGIONAL COUNCIL**

Thank you for opportunity to make this submission on the 'Strengthening New Zealand's emergency management legislation' discussion document.

### **Introduction**

As a regional council, the Hawke's Bay Regional Council (HBRC) has a number of varying roles and responsibilities in relation to emergency management, including:

- a) administering authority for:
  - a. the Hawke's Bay Civil Defence Emergency Management Joint Committee (HBCDEM Joint Committee)
  - b. the HBCDEM Coordinating Executive Group (CEG)
- b) employer of staff within the Hawke's Bay Emergency Management Office
- c) a local authority supporting responses to, and recovery from, emergency incidents
- d) a provider of professional technical expertise, data and advice for a range of hazards and risks in Hawke's Bay and
- e) a manager of multi-million dollar valued flood and drainage scheme assets across Hawke' Bay.

Our submission focusses on those key issues relevant to HBRC's role and responsibilities.

As administrative authority for the HBCDEM Joint Committee, HBRC has real-life experience and challenges of funding gaps following the Group's response and role in recovery from Cyclone Gabrielle's damage, disruption and tragic loss of lives in February 2023. We have previously provided advice on the funding and financial implications in the context of a 'Section 33 Review' exercise (see Attachment 1).

The HBCDEM Joint Committee is overseeing a HBCDEM 'Transformation Strategy' and programme of subsequent works over the next three years. This 'transformation' requires significantly more funding and resourcing than what has been provided to the HBCDEM Group's activities for the past decade or so. This transformation is a step-change in our region's inter-agency readiness for the next major emergency management response. For example, in March 2025, HBRC committed a further \$210,000 for:

- \$160k individual training
- \$30k exercise designer
- \$10k communication support
- \$10k design support.

Without significant resourcing, local emergency management readiness will be limited and sub-optimal.

## Post-Cyclone Gabrielle Reviews

Various independent reviews were commissioned following Cyclone Gabrielle. Those directly relating to HBRC's activities include:

- a) Hawke's Bay Independent Flood Review (HBIFR)
- b) Government Inquiry into the Response to the North Island Severe Weather Events
- c) HBCDEM Response to Cyclone Gabrielle, and
- d) Review of the Management of the Wairoa River Bar by HBRC.

Over 50 recommendations feature in those reviews and HBRC has an extensive programme of work to address those recommendations. Some have already been completed, many are underway, and several require further analysis and associated funding to be progressed further. HBRC has a significant programme of capital works to enhance our communities' resilience to flooding events. Those works are the biggest investments in drainage and flood management infrastructure the region has seen for many decades.

### **Objective 1 – Strengthening community and iwi Māori participation** (Issues 1-4)

We strongly support legislative changes that would empower and further strengthen capacity of communities to be more self-reliant in emergencies. Recent experiences clearly show us communities are the first tier of response, with neighbours helping neighbours.

We support the HBCDEM Group's submission elaborating on the four issues and proposals presented in the discussion document.

We acknowledge that the Government has already agreed that the EM Bill "*will make it explicit that people acting under official direction are protected from civil liability, where the loss or damage relates to a state of emergency or transition period.*" This is supported, but we would welcome clarity in the Bill about actions taken under official direction **prior to** declaration of a state of emergency.

Not all emergency events are instantaneous. Some like droughts and flooding have a slower onset period – a period within which directions might be given for proactive action, but without a state of emergency declaration in place. For example, works to clear streams, open rivermouths, etc. In circumstances like those, a 'business as usual' practice about civil liability also warrants being addressed in the EM Bill (or other legislative reforms).

*Request: Consider and clarify how the Bill can clarify situations of civil liability where people acting under official direction **prior to** Declaration of a State of Emergency.*

### **Objective 2 – Providing clear responsibilities and accountabilities at the national, regional and local levels** (Issues 5-7)

HBRC strongly supports legislation that provides clear responsibilities and roles for various agencies in emergency management.

Issue 5 describes options to provide clearer direction and control during an emergency. What is not clearly obvious in the discussion document is a scenario where two or more emergency events coincide (for example, a pandemic and then a damaging earthquake or severe weather, or all three!

Issue 6 fairly records that many CDEM Groups' resourcing and business models are limiting their effectiveness.

Issue 6.1 refers to the option for legislation providing distinct responsibilities for CDEM Joint Committees and their local authority members to manage local area emergencies. The discussion document is unclear about the place for CDEM Joint Committees in risk reduction and readiness **before** an emergency event occurs. Proactive risk reduction, resilience and readiness (e.g. through local land use planning decisions) has a critical inter-relationship with other elements of the Government's legislative reforms, such as climate adaptation and the new Acts intended to replace the RMA.

*Request: Consider and clarify how the Bill frames the roles and responsibilities of CDEM Joint Committees and their members regarding risk reduction and readiness BEFORE an emergency event occurs.*

We partly support the intention behind Issue 6.1 Option 3 for CDEM Group plans being required to state how each member will fund and deliver on the functions and decisions of the CDEM Joint Committee. However, we are not convinced that legislation will enable agile amendments to be made to Group Plans if circumstances of members, funding and commitments change over time.

There are other tools and instruments which the discussion document appears not to have explored, such as the triennial agreement under the Local Government Act, other joint council agreements, etc. If Group plans are the vehicle for funding commitments from members, then how flexible and agile might be a process to amend the Group plan to reflect adjustments in funding over time. Option 3 is cast as the Group Plan being required to state how each "member" will fund and deliver CDEM Group activities. The legislation should not preclude circumstances where non-council members or other entities might offer to provide funding of CDEM Group activities.

*Request: We urge officials to consider whether there are more appropriate instruments to use to signal and commit funding and delivery of CDEM Group functions in a way that, at least:*

- a) is robust, transparent and an instrument of gravitas recording an agreement and commitment*
- b) is based on a funding and commitment timeframe that is more than just one year to the next (for example, at least three years to align with council long-term plan periods)*
- c) supports sustainable longer-term funding models*
- d) disincentivises short-term/ad-hoc changes in members' funding and commitment and*
- e) does not preclude funding from non-Council members or funding sources.*

Issue 6.2 (clear and consistent organisation and accountability for EM) poses four options. We prefer Option 3, but Option 2 could be at least a minimum improvement providing clearer legislative guidance on organisation structure, accountability and roles within the emergency management system. We do not support the status quo.

We strongly oppose Option 4 which proposes mandating CEs of each local authority to hold roles of Controller and Recovery Manager. As outlined in our introduction to this submission, the activities and responsibilities of a regional council are wide ranging and demanding. Adding mandatory Controller and Recovery Manager responsibilities to all local authority CEs places extra burden on chief executives who already have high workloads and demands to look after their respective employees before, during and after an emergency. The Controller and Recovery Manager roles demand highly specialised skill sets and training. We do recognise that for smaller local authorities, Chief Executives may sometimes hold operational roles by necessity. However, this should remain an exception rather than a legislatively mandated norm.

In terms of Issue 6.3 (enhancing CEGs), we prefer Option 2 and Option 4. We do not support the status quo. CEGs have responsibilities for advising CDEM Joint Committees, plus implementing the Joint Committee's decisions and Group Plan reviews. It is essential that councils and relevant agencies are represented by appropriately senior executives that can make the on-going commitment necessary for the CEG's functions.

### **Objective 3 – Enabling a higher minimum standard of emergency management** (Issues 8-10)

We support enhanced national direction and assurance in the realm of emergency management.

#### *Issue 8.1*

In terms of strengthening the Director's mandate for assurance (Issue 8.1), we think an ideal option would be a combination of options 3 and 4 in the discussion document.

#### *Issue 9*

The discussion document refers to the CDEM Act's intentions for CDEM Groups to bring together different hazard risk management tools held by councils. Practice has been highly variable. We support tools that would strengthen local hazard risk management. There is benefit in enhanced non-legislative supports (Options 2 and 3) and possibly greater use of templates for example.

However, we are not convinced that the CDEM Joint Committees and/or CEGs are the most appropriate entity for overseeing **all** the relevant ingredients for proactively identifying and managing risks locally and in a region. For example, many risks in our region will be exacerbated by climate change. A longer-term planning horizon for risk warrants a wider range of skillsets, expertise and leadership that are distinct to those for supporting current-day emergency preparedness.

We are also conscious that the Government has announced intentions to replace the RMA and various other reforms to the wider resource management system. The EM Bill must be integrated within that wider reform programme, including the Government's wider programme of work involving climate [risk] adaptation.

*Request: Develop the EM Bill and associated guidance to align with other legislation and reforms so overall integrated package for multi-agency actions to identify risks, particularly risks that will be exacerbated by changes in our climate.*

#### *Issue 10.1*

We support strengthening of due consideration of taonga Māori and other cultural heritage in emergency management (Issue 10.1). Option 2 (Table 14) should be a minimum, but Option 3 is better, provided it is through genuine engagement with mana whenua and strong relationships, rather than imposed through regulation (which is consistent with points made in relation to Objective 1 above).

*Request: Clarify if Option 3 in Table 14 is intended so that knowledge of cultural heritage is identified **in** the CDEM Group Plans themselves, or if that information can be hosted in other forms (such as smart digital interactive mapping tools).*

#### **Objective 4 – Minimising disruption to essential services** (Issues 11-12)

We support modernising legislative settings for what is considered ‘lifeline’ utilities and essential services. Recent experiences in the Cyclone Gabrielle response and recovery phases certainly revealed the importance of a range of services that perhaps had not traditionally been considered ‘essential.’ We support the additional ‘essential’ services as suggested in the discussion document at paragraph 174. We suggest medical facilities/service providers plus also local aerodromes are also included. The Bridge Pa Aerodrome served a pivotal role in our region’s response to the disruption and damage during Cyclone Gabrielle in February 2023.

If Option 3 in Issue 11.1 is progressed, then perhaps the legislation should enable local CDEM Groups/Plans to develop two or three sub-categories of essential infrastructure and essential services so local arrangements are made commensurate to the types of emergencies faced in each region.

*Request: Ensure the EM Bill defines an ‘essential service’ as including those services that underpin the effective and efficient response and recovery to an emergency, (such as local aerodromes, medical services, as well as those suggestions listed in paragraphs 174 and 176(c). Similar should also apply to a definition of ‘essential infrastructure.’*

Issue 11.2 refers to strengthening lifeline utility business continuity planning. We agree business continuity planning is crucial in readiness for emergencies. The discussion documents options are ambiguous if the ‘financial penalties’ options would apply for business continuity planning in ‘over-design’ events – those events that exceed the design, construction and servicing specifications of hazard mitigation works.

We do not support legislation imposing financial penalties on statutory agencies operating schemes and hazard mitigation works in ‘over-design’ event circumstances. To “gold-plate” works to prevent ANY failure would divert funding and resourcing away from other priorities. We consider the system needs to also support improvements in emergency event responses and restoration of services by providers of lifeline infrastructure and essential services.

We prefer Option 2 (i.e. ‘Increase assurance of lifeline utilities’ business continuity plans (non-legislative).’ Option 2 provides for greater two-way understanding of priorities and capacity with an avenue for any particular issues to be elevated as needed. It would also allow for central government to provide guidance through setting specific benchmarks. Where these cannot be met, there is still room for constructive discussions to manage expectations and reevaluate the benchmarks.

Options 3 and 4 propose financial penalties for failure to set business continuity plans. We do not support these options as there needs to be more detail around the suggested requirements and the process for how penalties will be applied. Given that significant penalties already exist for extended service loss in some sectors, such as electricity, there is already an imposed financial incentive for planning and further penalties may be redundant. We do not support a ‘one-size-fits-all’ legislative regime for business continuity given the wide range of infrastructure and vulnerability to different types of emergencies.

*Request: Adopt Option 2 in first instance.*

*If financial penalties are to be progressed (Options 3 or 4), then the legislation must recognise that there will inevitably be events that exceed the design and construction parameters of mitigation measures. For example, flood levels in a severe rainfall event may exceed the design capacity of local drainage networks and open watercourses, or overtop design and construction of stopbanks. In those types of circumstances, financial penalties should **not** apply.*

**Objective 5 – Having the right powers available when an emergency happens** (Issues 13-16)

As noted elsewhere in this submission, we think it is important for agencies to not only have the right powers available **when** an emergency occurs, but also in the **build-up** to those events (such as slow-onset events of severe weather).

*Issue 15*

We support modernising processes and protocols to enter a state of emergency and transition periods (Issue 15, Options 2 and 3). Lots of modern business is conducted by digital online means nowadays. Proposals to enable electronic transactions and records are supported. Likewise, verbal declarations by authorised persons in presence of a witness is also supported as unforeseen circumstances (e.g. widespread power outage, limited access and mobility, disrupted communications technology etc) might necessitate such a protocol in some severe emergency events.

Thanks again for the opportunity to provide feedback on the shape and content of the new Emergency Management legislation.

Yours sincerely,



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## ATTACHMENT 1 – Previous feedback provided in context of the NEMA s33 Review

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To Whom it May Concern:

Please see feedback from Hawke's Bay Regional Council on Section 33, note this mainly concerns the Cyclone Gabrielle event and is from the Finance team involved.

In terms of the claims process, we'd like to commend Radha and Jie who were excellent to work with. The claims process itself was very robust and we appreciated the support from NEMA.

As it relates to costs claimable to NEMA, please see feedback below, most of this stems from the ability to cope with a disaster of scale similar to Gabrielle.

### **Welfare Costs:**

The current wording around eligible welfare costs is too narrow and restrictive. This is because at scale such as seen for Gabrielle we need to provide large scale support to the community, which involves ancillary costs (staging grounds, security, transport between hubs) that is necessary in order to provide support and welfare to the community for which the legislation was intended.

If we can only follow the letter of the current legislation this will either prohibit our ability to provide support at scale in a timely manner and / or be financially imprudent in order to meet NEMA claim thresholds.

Should this continue to be the way this could make Local Authorities reticent to provide the most effective response structure as costs that cannot be claimed will have to fall to ratepayers.

The intent of the legislation to provide support and response to the community should be the over-arching objective of the legislation rather than the prescriptive description currently.

### **Other Response Costs:**

We agree that staff performing response duties instead of their usual roles should not be claimable when in administrative functions, however:

1. When they are performing over-time duties or in extended emergencies we have to backfill BAU, we should have the ability to claim these costs rather than rely on the need to use external vendors / contractors at higher rates. This can lead to an interrupted response and higher costs as a result
2. Similarly Local Authorities should have the ability to deploy their own Works Groups / Assets teams to perform response and repair work. They exist within councils to fulfil this obligation and provide timely and more cost effective response, rather than needing to engage external vendors / contractors at higher rates.

**Additional Feedback:**

Through the Cyclone Gabrielle claim process, the use of the special claim to cater for the operation scale overhead costs that came with the response was very helpful. It would be well served for this to be codified in order to allow for reimbursement of costs associated with providing response to the community.

If we had more upfront confirmation on what costs can be incurred from the moment disaster response starts rather than waiting for the claims process, this would provide Local Authorities with more assurance and understanding of what can be claimed before incurring allowing for better response planning.

From Section 33.7, we encountered situations where responding organisations had incurred costs in welfare response that they were not authorised to do and then passed these back to HBRC with an expectation we would be able to claim. Given the limitation on only Local Authorities being able to claim, this should be examined to look at expansion to include other responding agencies or else a further re-enforcement to other responders they cannot incur welfare response expenses that they do not expect to claim themselves.

### **33.7 CDEM expense claims preparation and process**

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**Responsibility** Local authorities are initially responsible for meeting all emergency expenditure arising out of the use of resources and services provided under the direction of a CDEM Group or Local Controller. Particular care should be taken to keep a clear record of who authorises any expenditure, and why, in order to simplify any follow-up action.

If NEMA has authorised costs to be incurred by individuals or organisations outside of Local Authorities there should be a formal process for them to communicate this to Local Authorities if they expect claims to come back through Local Authorities or else other organisations should be able to claim re-imburement directly.

The autonomy of volunteers doing work and then expecting to be re-imbursed is problematic at scale given currently, only councils have the ability to claim costs.

We appreciate the ability to provide feedback, and if there is anything you wish to discuss further we would be happy to do so.

Thank you

James Park