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Enquiries to: Lisette Balsom



Private Bag 3038
Waikato Mail Centre
Hamilton 3240, NZ

waikatoregion.govt.nz
0800 800 401

15 March 2023

Governance and Administration Committee
Parliament Buildings, Wellington

Email: Governance.Administration@parliament.govt.nz

Dear Sir/Madam

Waikato Regional Council Submission to Severe Weather Emergency Legislation Bill

Thank you for the opportunity to submit on the proposed Severe Weather Emergency Legislation Bill. Please find attached the Waikato Regional Council's (the Council's) submission regarding the Bill. The submission was formally endorsed by the Director Science, Policy and Information under delegated authority on 15 March 2023.

Should you have any queries regarding the content of this document please contact Lisette Balsom, Manager, Strategic Policy Implementation directly on (07) 859 0572 or by email Lisette.balsom@waikatoregion.govt.nz.

Regards,

A handwritten signature in blue ink, appearing to read "Tracey May".

Tracey May
Director Science, Policy and Information

Submission from Waikato Regional Council on the Severe Weather Emergency Legislation Bill

Introduction

1. We appreciate the opportunity to make a submission on the Severe Weather Emergency Legislation Bill.
2. Waikato Regional Council (the Council) supports enabling legislation to allow urgent recovery from the recent severe weather events. Our submission points relate primarily to Part 4- Amendments to the Resource Management Act 1991.
3. Our submission outlines specific concerns and suggestions for improvements to a number of sections. More generally, we are concerned that regional councils will not have capacity to monitor compliance with permitted activities on rural land with the additional works enabled by the legislation.
4. We look forward to working with the Ministry for the Environment (MfE) on better resilience, climate adaptation and hazard risk management. We look forward to the Climate Adaptation Bill being presented to Parliament, and note the potential for MfE to bring some aspects of this forward, for example to prevent rebuilding on high-risk properties.
5. We look forward to further consultation processes to incorporate the proposed amendments into relevant statutes and would welcome the opportunity to comment on any issues explored during their development.

Submitter details

Waikato Regional Council
Private Bag 3038
Waikato Mail Centre
Hamilton 3240

Contact person:

Lisette Balsom
Manager, Strategic Policy Implementation
Email: Lisette.balsom @waikatoregion.govt.nz
Phone: (07) 859 0572

Concerns with sections 331A-F

We are concerned about the wide scope of sections 331A-F. We request guidance from MfE on what sections 331A-F will allow in terms of 'activities'.

1. While ss330AAA and AA are limited to the three recent weather events, ss331A-F collectively apply to any severe weather event, a sudden event or an adverse effect on the environment. While these provisions are repealed on 1 October 2023, they provide much wider scope in terms of the "trigger" for applying s331B (which we understand generally mirrors the powers available under s330). While the legislation is promulgated ostensibly to deal with the impacts of the previous severe weather events, the wide scope of ss331A-F means that it is available for essentially any further event until 1/10/2023.
2. The criteria for undertaking activities is very subjective, relying on what the owner/occupier "considers" is required, and "considers" is proportionate in the circumstances. Any such action taken is deemed a permitted activity, overriding any other provision in plans or regulations. We suspect that many landowners will be unsure as to what it will enable them to do. There will be a need for guidance from the Council or MfE on what these provisions allow.
3. We query extending permitted activity rules to apply to rural landowners and occupiers (rather than just network utility operators) under ss 331A-F. While this was done for the Kaikoura recovery, the current events are far more geographically widespread and therefore a different scenario. We believe that this will cause challenges from a compliance monitoring perspective – it will be difficult for regional councils to know what is happening on the ground to ensure compliance is being achieved.

Concerns with section 331B

We are concerned about the impact on enforcement of section 331B.

4. The subjective tests in s331B (what an owner/occupier "considers" is required and proportionate) would mean taking enforcement action in relation to s331B activities would be extremely challenging. This section also differs from the corresponding provisions of s330 in several ways. For example, acting under s330 relies on the "opinion" of the acting entity, while s331B turns on what the owner/occupier "considers". "Considers" sets a lower threshold for acting. This may make enforcement more difficult relative to s330.

SUBMISSION ON Severe Weather Emergency Legislation

Provision	Issue	Suggested remedy
Ss331A-331F overall	The scope of s331A-F collectively applies to not just a “severe weather event” (as sections s330AAA and AA do) but also any <i>sudden event or an adverse effect on the environment</i> . We consider the new legislation should be limited to enabling clean-up resulting from the recent weather events, or events as deemed by central government.	Delete the references to <i>sudden event or an adverse effect on the environment</i> in ss331A-F to align with the scope of s330AAA and s330AA.
S331A(2)(b)	We note that activities of forestry blocks could contribute additional slash and sediments to waterways.	Explicitly exclude forestry blocks from the definition of rural land.
S331B	<p>The enabling provisions of s331B permit “activities” to be undertaken as permitted activities, but there is no express limitation on what an “activity” is for the purposes of this provision except to the extent that an activity is explicitly “prohibited” under the relevant plan. There is no definition of “activity” either in the Bill or the principal Act. In particular, there is no linkage to what we presume is intended in this provision, ie activities which fall within the scope of ss 9, 12, 13, 14 and 15 of the RMA.</p> <p>The inherent difficulty of enforcement in relation to s331B suggests that the legislation should attempt to place some reasonable limits on the activities which are allowed, and not allowed under s331B. There are very few prohibited activities under the Waikato Regional Plan (WRP). For example, almost all discharges to water which are not permitted, controlled or restricted discretionary, are discretionary activities. It seems likely that with thousands of landowners in clean up mode after the recent weather events, some may act in a way that could result in further significant adverse effects. For example, disposing of accumulated silt in inappropriate locations. Some might think it reasonable and proportionate that accumulated silt can go back into the river it came from- which is not a prohibited activity under the WRP. Yet, the legality of actions taken turns on what the landowner considers is “required” and “proportionate”, not the effects of the activity directly.</p> <p>We are concerned that a wider definition of ‘activity’ will have undesired outcomes. For example, we would not want to see modification of streams to increase capacity if they are silted up during one of the events, or a landowner discharging untreated effluent to land or water if their ponds were at capacity.</p>	<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>Limit the scope of activities to which s331B applies, at least by excluding from its scope the direct discharge of contaminants to water or the discharge to, or placement of contaminants on land in circumstances which result in those contaminants entering water.</p>

S331B	There is no requirement for consent to be obtained for any activity that has ongoing effects as there is under ss330A and B. Therefore, a landowner who installs a culvert or some other permanent instream structure, is not required to obtain consent.	Apply the same s330A(2) and s330B(3) test for requiring consent to be obtained (ie there are ongoing effects) to works under s331B.
S331B	Failure to notify the consent authority within 60 working days results in the permitted activity status of the activity being revoked <u>as from the end of the 60 working day period</u> . This only has any statutory effect if the activity is ongoing. If the activity was completed prior to the end of the 60 working day period, then it has no effect either on the legality of the activity or the obligations on the farmer to give notice.	Amend s331B to make any activities under s331B <u>subject to</u> the notice requirements of s331C. This means that the activity is only permitted if s331C is complied with.
S331B	We are particularly concerned around occupation of the coastal marine area (CMA) by structures. Under the new provisions, landowners might be able to build structures in the CMA to substandard design and which may cause adverse effects, and which the Council would not have consented under normal circumstances.	Exclude s12 so that activities in the CMA are not permitted.