



# Enforcement, consent renewal and national direction statutory timeframes under the Resource Management Act 1991

## Orders in Council Engagement Material Severe Weather Integrated Response July 2023

### **Te Kōrero whakarapōpoto - Summary**

Temporary law changes are being proposed through the Order in Council mechanism under the Severe Weather Emergency Recovery Legislation Act 2023 (SWERLA) to support whānau and communities recover from the impacts of Cyclone Gabrielle. These changes also assist local authorities in Te Matau-a-Māui/Hawke's Bay and Tairāwhiti/Gisborne regions to meet their statutory requirements.

The severe weather events of early 2023 have significantly impacted whānau and communities and recovery is ongoing. The impact of these weather events has made it difficult for whānau and communities to comply with Resource Management Act (RMA) requirements and respond to RMA planning processes. It has also impacted the work programme and workloads of councils in affected areas. In previous hui, tangata whenua have emphasised that councils need to take action on non-compliance. Tangata whenua have also highlighted the importance of protecting the wai and the whenua when considering proposals, especially any proposals providing more time to meet statutory timeframes.

We would like to:

- hear your whakaaro on these proposals,
- understand your issues, needs and aspirations regarding these proposals, and
- explore how the proposals might include appropriate solutions for your whānau, hapū, iwi and communities.

### **He aha te take i hiahia ai te Ota i Kaunihera - Why are the proposed Orders in Council needed?**

In response to the severe weather events of early 2023, the SWERLA legislation enables Orders in Council, which allow for quick regulatory changes to respond to issues resulting from the severe weather events as they arise. The proposed Orders in Council are for three separate proposals.

## **Te Tono tuatahi - Proposal 1: Allow additional time for Gisborne District Council and Hawkes Bay Regional Council to take enforcement/prosecution action**

The severe weather events of early 2023 saw unprecedented volumes of debris mobilised in the waterways across the Tairāwhiti /Gisborne and Te Matau-a-Māui/Hawke's Bay regions resulting in widespread and severe damage. Councils in these areas have limited capacity in investigating breaches of the RMA which may have contributed to this damage.

Proposal 1 would extend the timeframe for commencing proceedings for breaches of the RMA that directly (under RMA section 338) caused damage during the severe weather events from 12 months to 24 months. This proposal is intended to give councils more time to gather evidence to take effective enforcement action. If the Order in Council did not provide this extension, there is a risk that enforcement action would not be taken when it is appropriate to do so, due to the scale of damage and capacity constraints. This proposal seeks to respond to concerns raised by tangata whenua at previous hui that councils need to take action on breaches, and the importance of protecting the wai and the whenua.

## **Te Tono tuarua - Proposal 2: Exercise of expired resource consents if new resource consent application is lodged prior to consent expiry**

Section 124 of the RMA provides for existing resource consent holders to continue to implement expired consents provided a new application for the same activity was lodged 6 months prior to the expiry of the existing consent (or up until 3 months prior with council agreement). As a result of the severe weather events in February 2023 some consent holders missed the 3-month window to apply for replacement consents. This means that they cannot benefit from section 124 of the RMA which would allow them to continue to operate while their consent applications are being processed.

Proposal 2 would allow consent holders who missed the opportunity under s124, to continue operating under an expired consent, to continue to operate under a deemed permitted activity. The deemed permitted activity is exactly as described in the expired consent and is bound by any conditions within that consent. This deemed permitted activity status would continue until 31 May 2024 or at the point where a new consent is granted or declined.

In early engagement hui concerns were raised about this proposal given the potential impacts of expired consents on tangata whenua, the wai and the whenua.

## **Te Tono tuatoru - Proposal 3: Additional time to action mandated requirements relating to Freshwater Management, Stock Exclusion Regulations, and the National Planning Standards**

Councils and communities are required to comply with RMA national direction instruments. The severe weather events have impacted the capacity of these Councils and communities and resulted in additional workloads to meet the requirements of these instruments.

The three national direction instruments affected are the National Policy Statement – Freshwater Management (NPS-FM), Resource Management (Stock Exclusion) Regulations 2020 and the National Planning Standards.

Proposal 3 would see extensions of time for Hawke's Bay Regional Council, Gisborne District Council and Hastings District Council and communities in meeting their requirements for these national direction instruments.

Freshwater planning instruments require extensive consultation and stakeholder participation. It may be insensitive and inappropriate to progress the implementation of the freshwater planning instrument on its original timeline (due to be notified on 31 December 2024) given that so many iwi, hapū and rural

communities are still dealing with the immediate impacts of the severe weather events. Proposal 3 would allow an additional three years to complete the planning.

The Resource Management (Stock Exclusion) Regulations 2020 (Stock Exclusion Regulations) require stock to be excluded from lakes, rivers and natural wetlands. For existing farms, the majority of the requirements took effect from 1 July 2023. As a direct result of the severe weather events many farms are now non-compliant with these regulations.

A Hawkes Bay Regional Council online survey in April 2023 found that for the 430 respondents, 92% had lost fencing totalling 2030km of conventional wire fencing and 1570km of electric fencing. Proposal 3 would provide an additional two years to comply with the Stock Exclusion Regulations in Tairāwhiti /Gisborne and Te Matau-a-Māui/Hawke's Bay regions.

Hastings District Council has outlined that the timeframes for implementing the National Planning Standards cannot be met, as its resource is focused on recovery from the severe weather events. Hastings District Council has requested additional time, until August 2026 to comply with the Standards.

## **Ka aha te Order in Council - What would the proposed Order in Council do?**

### **Te Tono tuatahi - Proposal 1**

The proposed Order in Council would amend section 338 of the RMA, allowing Gisborne District Council and Hawke's Bay Regional Council an additional 12 months to gather any additional evidence required to take effective action in commencing proceedings for RMA non-compliances. This means that prosecution / enforcement action could be taken against parties for non-compliance that directly caused damage during the severe weather events until 17 February 2025.

The proposal would only apply to prosecution / enforcement action taken by either Gisborne District Council or Hawke's Bay Regional Council. No other changes are proposed to section 338 where criteria, processes and evidential requirements are to remain. After the extension expires, the usual prosecution / enforcement action process would apply.

### **Te Tono tuarua - Proposal 2**

The proposal would treat an activity set out in a previous resource consent as a permitted activity, meaning the activity could continue for a set time period. This would only apply where the following circumstances are met:

- The holder of the consent applied for a replacement consent within 3 months prior to that consent expiring
- The holder of the consent lodged the application for a new consent for the same activity after 12 February 2023
- The activity that is deemed permitted is exactly as described in the existing consent and is bound by any conditions within that consent, for example, if there was an existing condition to engage with mana whenua, then that condition still applies
- The deemed permitted activity will be retrospective, taking effect from the day the previous consent expired

- The activity ceases to be deemed permitted on 31 May 2024 or at the point a new consent is granted or declined, whichever is sooner.

The Order in Council would apply retrospectively. This avoids placing additional time pressures on Council to process new applications which were not lodged within the 3 to 6 month period required by section 124 of the RMA. It will also allow Council and consent holders to understand the potential hydrological changes, changes to freshwater ecosystems and impacts to freshwater values caused by the severe weather events.

The Order in Council would not apply to new consents lodged prior to 12 February or those which have expired. The Order will not change any of the functions of Section 124 of the RMA.

### **Te Tono tuatoru - Proposal 3**

The proposal would provide Councils and communities additional time to comply with national direction instruments.

#### *National Policy Statement – Freshwater Management*

Hawke's Bay Regional Council and Gisborne District Council would be provided an additional 3 years to notify a freshwater planning instrument, from 31 December 2024 to 31 December 2027. The Minister or Ministry for the Environment would support Council by providing a set of expectations that should be achieved prior to full NPS-FM implementation. The plan would be tailored to each catchment to respond to the findings of the Ministerial Inquiry into Land Use.

The proposal would override the RMA and NPS-FM only as it relates to Hawke's Bay Regional Council and Gisborne District Council. This proposal would only extend the timeframes, and the Ministry for the Environment will continue to work with these Councils to support its ongoing implementation.

#### *Resource Management (Stock Exclusion) Regulations 2020*

People in Te Matau-a-Māui / Hawke's Bay and Tairāwhiti/Gisborne regions would be provided with an additional 2 years to exclude stock from water bodies, until 30 June 2025. This would remove stress related to non-compliance as well as delay the need for immediate extensive fence building. Further it would allow time for data to be gathered on post severe weather event river and riverbank conditions which may impact on the location of fencing.

We have heard that 2 years may not be sufficient to replace all the fencing lost during the severe weather and we are interested in further views on appropriate timeframes.

The proposal would override the RMA and Resource Management (Stock Exclusion) Regulations 2020 only as it relates to Hawke's Bay Regional Council and Gisborne District Council. This change only relates to the timeframe, no other changes are proposed.

#### *National Planning Standards*

Hastings District Council would be provided with an additional 2 years to align its District Plan with the National Planning Standards framework, until 31 August 2026.

The proposal would override the RMA only as it relates to Hastings District Council. This change only relates to the timeframe, no other changes are proposed.

## Where would it apply and when?

The proposals would be limited to the Te Matau-a-Māui/Hawke's Bay and Tairāwhiti regions, where the severe weather events significantly impacted the work programme and workloads of Councils.

The proposed Orders in Council are intended to be enacted in September 2023 and come into force on the day it is enacted, given the need for urgency.

Each Order in Council would be in effect until a day following the last date stipulated in the Order. This would ensure that each achieves their specific purpose.

### Meeting the purpose of the Severe Weather Emergency Recovery Legislation Act

The proposals meet the purpose of the SWERLA as set out in section 3(1), as they will assist communities and councils to focus on planning, rebuilding, and recovering.

### He pātai – questions

- He aha ou whakaaro mō ēnei tono? - What are your views on proposal 1, 2, and 3?
- Ka tautoko ēnei tono? Āe, kāhore ranei? He aha ai, he aha i kore ai? Do you support providing additional time for these statutory requirements? And if so, why/why not?
- He aha ngā panga o ēnei tono ki a koe, ki to whānau, ki to hapū, ki to iwi, ki to hapori, ki to pakihi? How would the proposed changes impact on you/your hapū/iwi or whānau/community/business?
- E tika ana ēnei wā whakarerekē mō ngā tono? Do you consider the altered timeframes across the proposals are appropriate?

### Whakahoki kōrero - How to provide feedback

Tēnā, kia whai wā mai, he huarahi anō ki te tuku whakaaro mō ēnei tono. Ka tukua ngā whakaaro katoa ki mua i te aroaro o te rōpū arotake. We welcome your feedback on how best to ensure the proposals work well in practice. Feedback will be provided to the review panel considering these Orders in Council under the Severe Weather Emergency Recovery Legislation Act 2023.

Please email your feedback to: [severeweather@mfe.govt.nz](mailto:severeweather@mfe.govt.nz).

Feedback must be received by 5pm Tuesday 1 August 2023.