

House of Representatives

Supplementary Order Paper

Thursday, 1 December 2016

Hurunui/Kaikōura Earthquakes Emergency Relief Bill

Proposed amendments for the consideration of the Committee of the whole House

Key:

- **this is inserted text**
- **~~this is deleted text~~**

Note: This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT have official status in terms of unamended text**
- **NOT have the status of an as-reported version of the Bill.**

Explanatory note

This Supplementary Order Paper does the following:

- extends the time periods in *clauses 5(2) and 7(2)* (which relate to the time by which various persons must give notice of having acted under emergency powers authorised by the Resource Management Act 1991); and
- amends *clause 6* to require the local authority to provide written notice of having entered a place to the ratepayer for the land on which the place is situated; and
- extends the time period in *clause 11(2)* (which relates to the time by which an owner or occupier of rural land must give notice of having acted under *clause 10*); and
- in *clause 14(1)*, the date on which *subpart 2 of Part 2* is repealed is changed from 30 March 2017 to 31 July 2017; and
- clarifies the requirements in *clause 16(2)(b) and (c)* in relation to dumping and depositing of material in respect of the harbour rehabilitation (including by deleting references to “depositing”, as this concept is already covered in *sub-clause (2)(f)*); and
- clarifies the requirements in *clause 18* in relation to the use of emergency powers by the Kaikoura District Council and the Canterbury Regional Council in respect of the harbour rehabilitation; and
- amends, in *clause 19*, the process for a consent authority considering a resource consent application for a deemed controlled activity in relation to the harbour to allow the authority, if it considers it appropriate to do so, to hold a meeting and hear those persons who have made written comments on the application; and
- clarifies in *clause 21* that the consent authority must consider the written comments (and oral comments, if applicable) made on the application (rather than the summary of those comments); and
- clarifies the repeal date in *clause 14* that is referred to in *clause 25*; and
- makes minor and technical drafting changes throughout the Bill.

The Honourable Gerry Brownlee, in Committee, to propose the amendments shown in the following document.

Hon Gerry Brownlee

Hurunui/Kaikōura Earthquakes Emergency Relief Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Hurunui/Kaikōura Earthquakes Emergency Relief Act **2016**.

2 Commencement

This Act is deemed to have come into force on 14 November 2016.

Part 1
Preliminary provisions

3 Interpretation

(1) In this Act, unless the context otherwise requires,—

earthquake-affected area means, to the extent that they are affected (whether directly or indirectly) by the Hurunui/Kaikōura earthquakes,—

- (a) the districts and regions of the local authorities; and
- (b) the parts of the coastal marine area that are part of, or adjacent to, the districts and regions of the local authorities

Hurunui/Kaikōura earthquakes or **earthquakes**—

- (a) means the earthquakes that occurred on 14 November 2016 in Hurunui and Kaikōura; and
- (b) includes any earthquake that occurs in, or significantly affects, the earthquake-affected area on or after 14 November 2016

local authority, for the purposes of **subpart 1 of Part 2**, means—

- (a) the Hurunui District Council, the Kaikoura District Council, the Marlborough District Council, the Wellington City Council, the Hutt City Council, the Canterbury Regional Council, and the Wellington Regional Council; and
- (b) a local authority specified for the purposes of this definition in an Order in Council made under **section 23**

Minister means the Minister of the Crown who, with the authority of the Prime Minister, is responsible for the administration of this Act

plan—

- (a) has the meaning given in section 2 of the RMA; and
- (b) includes a proposed plan

RMA means the Resource Management Act 1991.

- (2) A term defined in the RMA that is used, but not defined, in this Act has the same meaning as in the RMA.
- (3) An example used in this Act is only illustrative of the provision to which it relates. It does not limit the provision.
- (4) If an example and a provision to which it relates are inconsistent, the provision prevails.

4 Act binds the Crown

This Act binds the Crown.

Part 2

Modifications to application of RMA

Subpart 1—Modification of emergency powers

5 Modified requirements for exercise of emergency powers under section 330 of RMA

- (1) This section applies if, because of or in connection with the Hurunui/Kaikōura earthquakes, a person, local authority, consent authority, network utility operator, or lifeline utility (or a person acting on their behalf) undertakes an activity in the earthquake-affected area under section 330 of the RMA.
- (2) The time within which advice of the activity must be given under section 330A(1) is extended to ~~40~~ 60 working days.
- (3) The time within which any application for a resource consent must be lodged under section 330A(2) is extended to 120 working days.
- (4) Section 330A(3) applies subject to the time periods as modified by **subsections (2) and (3)**.

6 Modified application of section 330(2) of RMA to local authority

- (1) This section applies if, because of or in connection with the Hurunui/Kaikōura earthquakes, a local authority or consent authority acting under section 330(2) of the RMA enters a place on land within the earthquake-affected area when the occupier is not there.
- ~~(2) Section 330(3) is satisfied, and the local authority is not required to take further action to contact the occupier, if a notice is displayed in a prominent place on the land that gives the date and purpose of entry and the contact details of a person who can provide further information.~~
- (2) Section 330(3) is satisfied, and the local authority or consent authority is not required to take further action to contact the occupier, if—
 - (a) there is displayed in a prominent place on the land a notice that gives the date and purpose of entry and the contact details of a person who can provide further information; and
 - (b) as soon as practicable after entering the land, the local authority or consent authority serves written notice (containing the same information as in **paragraph (a)**) on the person who is the ratepayer for the land for the purposes of the Local Government (Rating) Act 2002.

7 Modified requirements for exercise of emergency powers to which section 330B of RMA applies

- (1) This section applies if, because of or in connection with the Hurunui/Kaikōura earthquakes, a person (or a person acting on their behalf) undertakes an activity to which section 330B of the RMA applies in that part of the earthquake-affected area to which a state of emergency or transition period under the Civil Defence Emergency Management Act 2002 applies.
- (2) The time within which advice of the activity must be given under section 330B(2) is extended to ~~40~~ 60 working days.
- (3) The time within which any application for a resource consent must be lodged under section 330B(3) is extended to 120 working days.
- (4) Section 330B(4) and (5) applies subject to the time periods as modified by **subsections (2) and (3)**.

8 Limitation on application of subpart

This subpart applies subject to the limitation set out in **section 18** (which relates to the use of emergency powers for certain activities in respect of the rehabilitation of Kaikōura ~~H~~harbour).

Subpart 2—Emergency activities undertaken by certain rural landowners
and occupiers

9 Application of this subpart

- (1) This subpart applies to activities undertaken on rural land to which 1 or more of the district or regional plans of any of the following local authorities apply:
 - (a) the Hurunui District Council, the Kaikoura District Council, the Marlborough District Council, and the Canterbury Regional Council; ~~or~~
 - (b) a local authority specified for the purposes of this section in an Order in Council made under **section 23**; ~~and~~
- (2) In this subpart, **rural land** means land that—
 - (a) is within the district of—
 - (i) the Hurunui District Council, the Kaikoura District Council, or the Marlborough District Council; or
 - (ii) a local authority referred to in **subsection (1)(b)**; and
 - (b) either—
 - (i) has rural zoning status (however described) in the relevant district plan; or
 - (ii) is used for the primary purpose of livestock or horticultural farming.

10 Owner or occupier of rural land may take emergency preventive or remedial actions

- (1) **Subsection (2)** applies if,—
 - (a) because of or in connection with the Hurunui/Kaikōura earthquakes, a sudden event or an adverse effect on the environment has caused, is causing, or is likely to cause loss of life or injury to humans, loss of life or serious detriment to the health or well-being of animals, or serious damage to land or property; and
 - (b) the owner or occupier of rural land—
 - (i) considers, on reasonable grounds, that immediate preventive or remedial measures are required on the owner's or occupier's rural land to avoid, remedy, or mitigate the loss, injury, detriment, or damage; and
 - (ii) undertakes an activity to give effect to the measures; and
 - (c) in the circumstances, the activity is proportionate to the loss, injury, detriment, or damage or the risk of ~~any of those~~ the loss, injury, detriment, or damage; and
 - (d) the activity will not cause significant adverse effects beyond the boundaries of the owner's or occupier's rural land.

- (2) The activity is deemed to be a permitted activity for the purposes of the relevant district or regional plan (or both).
- (3) **Subsection (2)** applies whether or not the sudden event or adverse effect was foreseeable.

11 Requirement for owner or occupier to give notice

- (1) An owner or occupier of rural land who has acted under **section 10** must give written notice to the relevant consent authority that the activity has been undertaken.
- (2) Notice must be given within ~~40~~ 60 working days from the start of the undertaking of the activity.
- (3) If the owner or occupier fails to comply with **subsection (2)**, the permitted activity status of the activity is revoked as from the date on which the notice period ends.

12 Duty to gather information, monitor, and keep records

Nothing in this subpart limits or affects a local authority's duties under section 35 of the RMA.

13 Enforcement proceedings

For the purposes of activities undertaken under this subpart, only the relevant local authority may take enforcement proceedings (including declaratory proceedings) under Part 12 of the RMA, including in any case where it is alleged that the ~~rural land~~ owner or occupier of rural land has breached section 16 or 17 of the RMA.

14 Repeal of subpart and its effect

- (1) This subpart is repealed on ~~30 March 2017~~ 31 July 2017.
- (2) The repeal does not affect the permitted activity status conferred on an activity under **section 10(2)**.
- (3) However,—
 - (a) **subsection (2)** does not limit or affect the operation of the RMA (including the ability to change the status of the permitted activity in a district or regional plan) after the repeal of this subpart; and
 - (b) **section 13** continues to apply, despite its repeal, for the purposes of taking any enforcement proceedings in relation to the permitted activity.

Subpart 3—Rehabilitation of Kaikōura ~~Harbour~~ harbour

15 Interpretation

In this subpart, unless the context otherwise requires,—

consent authority means the Kaikoura District Council or the Canterbury Regional Council (or both)

deemed controlled activity means an activity to which **section 17** applies

Kaikōura harbour or **harbour** means—

- (a) the area of the sea (and adjacent foreshore) on the northern side of the Kaikōura ~~peninsula~~ Peninsula that falls more or less within the arc of a circle that has a radius of 0.6 nautical miles centred on the Ingles Bay wharf front lead light; and
- (b) the area of the sea (and adjacent foreshore) on the southern side of the Kaikōura ~~peninsula~~ Peninsula that falls more or less within the arc of a circle that has a radius of 0.6 nautical miles centred on the South Bay Boat Harbour green flashing aid to navigation

rehabilitation work has the meaning given in **section 16**.

16 Meaning of rehabilitation work

- (1) In this subpart, **rehabilitation work** means an activity described in **subsection (2)** if, because of or in connection with the Hurunui/Kaikōura earthquakes, it is necessary or desirable to undertake the activity so that the Kaikōura harbour and its facilities are able to be used fully, effectively, and safely.
- (2) The activities are— as follows:
 - (a) disturbing the foreshore or seabed within the harbour, including by dredging, excavating, drilling, tunnelling, or blasting;
 - (b) ~~removing foreshore or seabed material from the harbour and depositing or dumping it in, on, or under other areas of—~~
 - (i) ~~foreshore within the Kaikōura district:~~
 - (ii) ~~land within the Kaikōura district:~~
 - (c) ~~removing foreshore or seabed material from the harbour and depositing (but not dumping) it in, on, or under the seabed within the harbour:~~
 - (c) removing foreshore or seabed from the harbour and dumping it in, on, or under—
 - (i) foreshore within the Kaikoura district:
 - (ii) land within the Kaikoura district:
 - (d) erecting, reconstructing, repairing, altering, extending, removing, or demolishing a structure within the harbour;
 - (e) using or storing machinery or hazardous material within the harbour or in, on, or under other areas of—
 - (i) foreshore within the Kaikōura district:
 - (ii) seabed within the Kaikōura district:

- (iii) land within the Kaikōura district:
- (f) an activity associated with an activity described in any of **paragraphs (a) to (e)**, including—
 - (i) the discharge of any thing associated with disturbing the foreshore or seabed; and
 - (ii) the discharge of any thing associated with moving foreshore or seabed material and depositing it elsewhere.
- (3) In this section, **Kaikōura district** means the district of the Kaikōura District Council and the coastal marine area adjacent to that area.

17 Deeming of certain rehabilitation work to be controlled activity

- (1) This section applies to rehabilitation work that has any status other than that of a permitted activity under any of the following:
 - (a) the district plan of the Kaikoura District Council;
 - (b) a regional plan of the Canterbury Regional Council.
- (2) If the work is undertaken by or on behalf of an authorised person, the work is deemed—
 - (a) to be a controlled activity; and
 - (b) to satisfy the requirements of section 107(2)(a) to (c) of the RMA.
- (3) Despite sections 87A(2)(b) and 104A(b) of the RMA, a consent authority may impose on a resource consent granted for an activity to which **subsection (2) applies** any conditions under section 108 of the RMA that it considers appropriate on a resource consent granted for an activity to which **subsection (2) applies** for the purposes of managing or monitoring the environmental effects of the activity.
- (4) In this section, **authorised person** means any of the following:
 - (a) the Kaikoura District Council;
 - (b) the Canterbury Regional Council;
 - (c) a person authorised by the Kaikoura District Council or the Canterbury Regional Council (or both).

18 Application of emergency powers to deemed controlled activity

The modifications to the RMA set out in **subpart 1** do not apply in respect of a deemed controlled activity undertaken by or on behalf of the Kaikoura District Council or the Canterbury Regional Council unless the council concerned,—

- (a) ~~before the activity is undertaken,—~~
 - (i) ~~considers the environmental effects of the activity and how they may be avoided, remedied, or mitigated; and~~

- ~~(ii) considers any effects of the activity on marine mammals and sea-birds and how the effects may be avoided, remedied, or mitigated; and~~
- (a) before the activity is undertaken, considers the environmental effects of the activity (including the effects on fish, marine mammals, and sea-birds) and how the effects may be avoided, remedied, or mitigated; and
- (b) while the activity is being undertaken,—
 - ~~(i) monitors its environmental effects and the effects on marine mammals and seabirds (whether itself or by a person on its behalf); and~~
 - (i) monitors the environmental effects of the activity, (including the effects on fish, marine mammals, and seabirds); and
 - (ii) avoids, remedies, or mitigates those effects as far as is practicable.

Example

A person authorised by the Canterbury Regional Council (**A**) needs to dump seabed material that has been dredged from the Kaikōura harbour.

When choosing the area of foreshore or land on which to dump the material, the Council must consider various things, including the sensitivity of the site (for example, whether it is a culturally significant site), the mechanics of dumping at that site (for example, ~~whether it would be a at that site where~~ the spoil could be unstable or enter any waterway or water body) and whether the material is being dumped in the location on a temporary or permanent basis.

While A is dumping the spoil, the Council must monitor, ~~amongst~~ among other things, how it is affecting the site (for example, how much fine material is moving into the surrounding area) and take steps to minimise that effect.

19 Process for consent authority considering resource consent application for deemed controlled activity

- ~~(1) As soon as practicable after an application for a deemed controlled activity is lodged with a consent authority, it must—~~
 - ~~(a) advise the persons specified in **subsection (2)** that an application has been lodged; and~~
 - ~~(b) invite written comments from those persons.~~
- (1) As soon as practicable after an application for a deemed controlled activity is lodged with a consent authority, the consent authority—
 - (a) must advise the persons specified in **subsection (2)** that an application has been lodged; and
 - (b) must invite written comments from those persons; and
 - (c) may, if the consent authority considers it appropriate, hold a meeting to allow those persons to orally present their comments.
- (2) The persons are—

Proposed amendments to

- (a) Te Rūnanga o Ngāi Tahu and any relevant Papatipu Rūnanga identified by Te Rūnanga o Ngāi Tahu; and
 - (b) the Kaikoura District Council; and
 - (c) Te Korowai o Te Tai o Marokura, Kaikoura Coastal Marine Guardians Incorporated; and
 - (d) Maritime New Zealand; and
 - (e) the Minister of Conservation; and
 - (f) the Minister for the Environment; and
 - (g) the Minister of Defence; and
 - (h) the Minister for Primary Industries; and
 - (i) the Canterbury Regional Harbourmaster; and
 - (j) the Canterbury Regional Council; and
 - (k) the owners and occupiers of land directly adjacent to where the activity is being undertaken; and
 - (l) any other person as the consent authority considers appropriate, including the public generally.
- (3) For the purposes of ~~subsection (1)(b)~~ **subsection (1)**, the consent authority must—
- (a) invite each person referred to in **subsection (2)** to make written comments on the application; and
 - (b) give those persons 10 working days from the making of an invitation within which to make their comments to the consent authority; and
 - (c) specify in the invitation the date by which written comments are to be received by the consent authority; and
 - (d) if applicable, specify the date on which the consent authority will hold a meeting to hear the comments.
- (4) An invitation under this section is to be treated as a document to be served for the purposes of the RMA, and section 352 of that Act applies accordingly.
- (5) A person invited to make written comments under this section on an application—
- (a) may not appeal under the RMA against the consent authority's decision on the application; and
 - (b) may not object under Part 14 of the RMA against the consent authority's decision on the application.
- (6) To avoid doubt, a person who makes written comments to a consent authority under this section is not to be treated under the RMA as a person making a submission on the application.

20 Application of RMA to resource consent application for deemed controlled activity

For the purposes of this subpart,—

- (a) an application for a deemed controlled activity must not be publicly notified or given limited notification; and
- (b) **section 19** applies to the application instead of sections 95 to 99A of the RMA; but
- (c) otherwise the application must be determined in accordance with Part 6 of the RMA (applied with all necessary modifications) except that—
 - (i) the consent authority need not have regard to the matters in section 104(1)(b) of the RMA when considering the application; and
 - (ii) for the purposes of section 115 of the RMA, the period during which comments are sought under **section 19** of this Act is excluded from the time limits in section 115.

21 Summary of responses

- ~~(1) Before a consent authority makes a decision on an application for a deemed controlled activity, a summary of the written comments made on the application under **section 19** must be prepared and considered by the consent authority.~~
- (1) Before a consent authority makes a decision on an application for a deemed controlled activity, the consent authority must—
 - (a) consider the comments made on the application under **section 19**; and
 - (b) prepare a summary of the comments (both written and oral, if applicable).
- (2) The summary, together with the consent authority's response to the issues raised in the ~~written~~ comments, must be made publicly available on an Internet site at the same time as, or before, the decision on the application is notified under the RMA.

22 Enforcement proceedings

For the purposes of activities undertaken in reliance on this subpart, only a consent authority or a Minister of the Crown may take enforcement proceedings (including declaratory proceedings) under Part 12 of the RMA, including in any case where it is alleged that a consent holder has breached section 16 or 17 of the RMA.

Part 3

Miscellaneous provisions

23 Order in Council may specify additional local authorities

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, specify 1 or more additional local authorities for the purposes of the definition of local authority in **section 3(1)** or the application provision in **section 9(1)** (or both).
- (2) The Minister may make a recommendation only if he or she is satisfied that—
 - (a) an earthquake has occurred in, or significantly affected, the earthquake-affected area after this Act is enacted; and
 - (b) the district or region, or any part of the district or region, of the local authority is affected by the earthquake to the extent that it is necessary or desirable to apply the measures available under this Act to that area.

24 Application of Legislation Act 2012

- (1) An Order in Council made under **section 23** is a disallowable instrument for the purposes of the Legislation Act 2012.
- (2) An Order in Council made under **section 23** is also a legislative instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

25 Repeal of this Act

This Act is repealed on 1 April 2018, with the exception set out in ~~section 14(1)~~ **section 14**.