

MEMO

Date: 14/03/2023

Subject: EMERGENCY WORKS UNDER RMA S329, S330, S330AAA, S330AA, S330B AND S330C

Note: this advice will be reviewed with any updates and legislation amendments.

Context

This memo has been prepared in order to provide guidance around the appropriate use of s.330 of the Resource Management Act 1991 (RMA) and amendments made to s330 by the Severe Weather Emergency Legislation Act 2023 (SWELA), which was passed into law on 20/03/2023.

This memo is specifically aimed at local and consent authorities, network utility operators, lifeline utilities and persons in charge of public works, including persons acting on their behalf who have been delegated authority that [s330](#) of the RMA confers powers to (more on this below).

SWELA applies to areas which were affected by extreme weather events in the North Island in January and February 2023 'affected areas' (see amended [s329A](#)).

The whole of the Hawke's Bay Region, including the districts, are considered to be an 'affected area' by SWELA (among other regions and districts). The aim of SWELA is to ease the administrative burden of applying for resource consents to take emergency, preventative and remedial action.

Changes SWELA has made to the RMA

For the period until 1 October 2024, SWELA has made changes to the existing provisions of s330 (which enables councils, network utilities and lifeline utilities to undertake emergency works to protect life/property). These changes include:

- Changes to the way in which Councils can inform occupiers and landowners if they enter private land in order to undertake emergency works, by way of notice rather than direct contact when the occupier cannot be found there (see [s330AAA](#) which makes modification to s330(3));
- Extending the period within which actions have to be advised to the relevant consent authority under both s330A and s330B – from 7 working days (WDs) to 100 WDs of the date the emergency activity has been undertaken (i.e. from the day the activity commenced where the activity will last more than one day). Note that for s330B the emergency provisions apply during both a state of emergency and the transition period that may follow a state of emergency; and
- extending the period within which consent has to be obtained for works (if there are ongoing adverse effects) under both s330A and s330B – from 20 and 60 WDs respectively to 160 WDs after notification to the consent authority.

Advice to Authorised People Carrying Out Emergency Works

During a state of emergency authorised persons will need to work through the below steps (Steps 1-6) in order to determine if emergency works can be undertaken under section 330 (s330), s330AAA, s330AA and s330C of the Resource Management Act, 1991 (RMA). These works should be necessary to save life, serious damage and/or to avoid adverse environmental effects. Persons or bodies undertaking emergency works are still expected to follow best practise approaches and otherwise fulfil general duties and responsibilities under the RMA as much as possible.

Where works are to be carried out by people or organisations not specified by s330, these works are required to be done in line with the relevant provisions of the RMA and other relevant regulations and plans.

Step 1: Determining authorised status

Determine if the person or body (the 'authorised person') considering action under s330 is entitled to utilise the powers afforded by the RMA. They must meet one of the following criteria;

- A person who has financial responsibility for any public work
- A local authority or consent authority with jurisdiction under the RMA for any natural and physical resource area
- Approved as requiring authority under [s167 of the RMA](#) and the network operator for any project or work
- Operates or provides a lifeline utility service or system, as defined by section 4 of the Civil Defence Emergency Act.

S330B (and amendments made by SWELA) also provides for activities being undertaken by a person exercising emergency powers during a state of emergency declared, or transition period notified, under the Civil Defence Emergency Management Act 2002 to remove the cause of, or mitigate the actual or adverse effects of, the emergency.

Step 2: Forming an opinion as to whether immediate action is needed

The relevant authority must form an opinion that any public work, any natural and physical resource or area, or any project or work, network utility operation, or lifeline utility is actually affected by or likely to be affected by any of the following:

- An adverse effect on the environment which requires immediate preventative, or remedial, measures
- Any sudden event causing or likely to cause loss of life, injury, or serious damage to property

Note: The Regional Council is not responsible for making a determination as to whether an authority is entitled to utilise the emergency works provisions under s330, the relevant authority must form their own opinion and be able to defend this, if necessary.

Step 3: Taking Action

Once the opinion is formed that the relevant authority may take preventative or remedial measures to remove the cause, or mitigate any actual or likely effect, of the emergency, the authority should ensure that any staff or contractors that are to act on their behalf have the necessary authorisations, delegations, and warrants (if required) to do so.

Consideration should be given to the best course of action available. *Taking action should go no further than is necessary to manage the emergency situation and consider likely on-going effects* (if any) from the action (with the aim of minimising the scale, severity and duration of such effects).

Whenever possible, authorities need to keep accurate and thorough records of all actions and decisions.

Step 4: Collection and collation of information on event and action taken

The person or authority, network utility operator, or lifeline utility should:

- Collect and record all relevant information by written record, recordings, verbal or visual or still photographs relied on, in reaching their opinion that immediate preventative measures or immediate remedial measures or any actions taken to avoid loss of life, injury or serious damage to property are appropriate
- Ensure full information recovery and recording of the event, and the action plan used to remove the cause, or mitigate any actual or likely effect, of the emergency. This might include showing evidence that
 - You have consulted with relevant technical experts (for example civil engineers)
 - Undertaken works to best industry standard, including appropriate erosion and sediment control.
 - Taken photographs as evidence during the course of construction
 - Had works signed off by a Chartered Professional Engineer where necessary, for example for works in waterways, such as bridges and culverts.

Step 5: Notice to consent authority (and resource consent application if necessary)

A person undertaking work that would usually require resource consent under s330 is now required to advise the consent authority (Regional Council) within 100 calendar days that the activity has been undertaken. This is 100 days from the commencement of the activity, where it lasts for more than one day (refer s330AA which modifies the requirements of s330A).

If resource consent would usually have been required for the activity, and the adverse effects of the activity are continuing, then the relevant authority must apply for resource consent within 160 working days of the notification given above.

In the instance that the resource consent application is made within the 160 working-day period, the activity may continue until the application for resource consent and any appeals have been finally determined.

Example of an activity which would not have ongoing effects and therefore would not require retrospective resource consent would be a discharge to air from a mobile asphalt plant.

Example of an activity which would have ongoing effects and therefore would require a retrospective resource consent would be a new bridge or culvert.

Step 6: Review and Compliance Checking

Review all prior steps for accuracy and completeness and undertake a review of how the emergency provisions of the RMA were utilised for the purpose of checking compliance, enhancing and/or streamlining processes for the future, and educative reasons.