

Council Briefing Agenda

Date: Wednesday, 13 November, 2024

Time: 9:00 am

Location: Civic Centre, Te Iwitahi, 9 Rust Avenue

Elected Members: His Worship the Mayor Vince Cocurullo
Cr Gavin Benney
Cr Nicholas Connop
Cr Ken Couper
Cr Jayne Golightly
Cr Phil Halse
Cr Deborah Harding
Cr Patrick Holmes
Cr Scott McKenzie
Cr Marie Olsen
Cr Carol Peters
Cr Simon Reid
Cr Phoenix Ruka
Cr Paul Yovich

For any queries regarding this meeting please contact the Whangarei District Council on (09) 430-4200.

1. **Apologies / Kore Tae Mai**
2. **Reports / Ngā Ripōata**
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3. **Closure of Meeting / Te katinga o te Hui**

2.1 Fluoridation update November 2024

Meeting:	Council Briefing
Date of meeting:	13 November 2024
Reporting officer:	Jim Sephton (Group Manager Infrastructure) Andrew Venmore (Water Services Manager) Rebecca Vertongen (Legal Counsel) Shelley Warton (Manager Infrastructure Capital Programmes)

1 Purpose / Te Kaupapa

To update Councillors on the progress of the fluoridation implementation project and outline the next steps including applying to the Ministry of Health for funding to install fluoridation equipment at Poroti water treatment plant, if the requirements of the Director General of Health's directive are to be met.

2 Background / Horopaki

In July 2022 the Director-General of Health issued a directive for WDC, along with 13 other Councils, to fluoridate water supplied from five water treatment plants in Whangarei and Bream Bay. The timeframe for this directive to be implemented was June 2024 for Whau Valley, July 2024 for Ruddells, September 2024 for Ahuroa and Ruakaka Water Supplies and June 2026 for Poroti Water Supply.

In October 2023 a contract to install fluoridation equipment was awarded. At the same time Council also agreed to accept funding from the Ministry of Health totaling \$4,557,856.88 (excl GST), being the full cost of constructing the fluoridation infrastructure at the first four plants. At Poroti the fluoride equipment was to be installed as part of the plant upgrade project in 2026. The operational cost of fluoridation will have to be met by Council.

In April, Council agreed to request an extension from the Director-General of Health. A response was received from the Director-General on 7th June 2024 approving the extension until 28 March 2025. This means that fluoride will need to be added to the water at the four treatment plants from the last week of February 2025.

2.1 Legal Background

In June 2023 New Health New Zealand Inc filed an application for a judicial review of the July 2022 directions issued by the Director General of Health. On 10th November 2023 the High Court issued its judgement finding the Director-General had made an error of law by not explicitly considering the New Zealand Bill of Rights Act 1990 in making the decision. However, the High Court did not quash the directives, nor did it find that fluoridation of water supplies was unlawful, and the original direction remained in force.

A second hearing was held on 2nd February 2024 to consider the appropriate relief. The judge decided that the directions remain in place but directed the Director-General of Health to assess each direction in terms of the Bill of Rights Act. Staff understand that the assessment is underway, but we do not have a timeframe for when the assessment will be completed.

The High Court was also recently asked to consider the legality of Hastings District Council complying with the directive. The Court held that to comply with the directive is not unlawful even while it is being reconsidered by the Director-General of Health. Consequently, the Hastings urban supply is now fluoridated.

3 Discussion / Whakawhiti kōrero

3.1 Legal Update

Whilst overseas there have been developments in the fluoridation debate, the local situation has not changed since the last briefing. The directives remain in force and the timeframes have not changed.

Tauranga City Council recently wrote to the Director-General of Health requesting an extension which the Director General declined. Subsequently Tauranga City Council have decided to commence fluoridation. It is noted that legal advice provided to elected members in Tauranga indicated that they could be personally financially liability for certain decisions.

Elected Members are usually protected from personal liability under the Local Government Act 2002 and indemnified for any action taken in good faith and carrying out the powers and responsibilities of the Council (section 43 LGA 2002).

However, this indemnity does not apply, and Elected Members may be liable (jointly and separately) for losses incurred by the Council, where the Governing Body has:

- Unlawfully spent money; and
- Unlawfully incurred a liability.

Costs incurred from refusing to follow an order from the Director-General of Health could fall within this exemption to the indemnification provisions.

Members are only liable for these types of losses if the Auditor-General issues a report on the loss to the Minister of Local Government. An elected member will have a defense (and will not be liable) if they can prove the act (or failure to act) that resulted in the loss occurred:

- without their knowledge;
- with their knowledge but against their protests made at or before the time when the loss occurred;
- contrary to the manner in which they voted on the issue at a meeting; or
- in circumstances where they acted in good faith and relied on reports, information, or professional / expert advice given by a council staff member or a professional adviser or expert on matters that the elected members reasonably believed were within the person's competency.

The provisions have been considered to impose an obligation on a member who is aware of an issue to take an active part, a failure to vote or silence on the vote may be taken as assent.

3.2 Construction update

Electrical Control Panels will be installed and completed over the next few weeks, with pre-commissioning checks completed as they are installed. Everything else, structural, mechanical, pipework, and civils is now complete.

3.3 Commissioning

Commissioning will be undertaken in two parts. The first part is dry commissioning when all equipment is checked and confirmed to be working but no fluoride is added to the water supply. The second part involves adding tightly controlled levels of fluoride to the water supply and ensuring systems and quantities are effective and accurate for a period of up to 30 days. At the end of the 30 days if the engineer is satisfied everything is working correctly commissioning will be considered complete.

Dry commissioning is expected to be completed on Ahuroa, Ruddells, Ruakaka and Whau Valley Water treatment plants by the end of November 2024. No further work other than routine maintenance will occur until the last week of February 2025 when wet commissioning with fluoride is programmed commence.

The date for completion of commission will be around 30 days after fluoride is first dosed. It is proposed to start dosing fluoride during the last week in February 2025 to meet the 28th of March deadline.

3.4 Implementation Considerations

There are no guidelines about how much notice is given to consumers prior to fluoride being added to the water supply. Staff consider that approximately 2 months is sensible and have a plan ready to implement from early December. In the meantime, staff have updated our website to show the proposed dates. The Ministry of Health website now also has the correct dates for Bream Bay and Whangarei, although does not mention the date for Poroti.

3.5 Poroti

The provision of fluoridation equipment at the Poroti water treatment plant was planned to occur in conjunction with the Poroti water treatment plant upgrade project. However, this project has been delayed and it is now clear that we will not be able to meet the direction deadline if we wait for the project. To meet the deadline we will need to install the fluoridation equipment separately and it is estimated this will cost about \$1.5 million. Staff have written to the Ministry of Health to request funding for the \$1.5 million along similar terms and conditions as the other treatment plants.

4 Financial/budget considerations / Ngā pānga pūtea/tahua

The Ministry of Health have agreed to fund the capital cost of proving fluoride equipment to the first four water treatment plants. This cost comes to \$4,557,856.88 (excl GST). Half of this, \$2,278,928.44, has already been paid to Council. The remaining \$2,278,928.44 is due for payment on completion of the commissioning of the sites. Staff have budgeted to receive this payment within this financial year.

No budget has been allowed for the fluoridation of Poroti water treatment plant. If funding for the Poroti fluoridation is not obtained from the Ministry of Health staff will bring a paper back to Council to consider options.

If Council fails to comply with the directive, then it could face a fine of up to \$200,000 plus ongoing fines of up to \$10,000 per day for each day the offence continues. The conditions of the financial agreement note that if there is a breach of the agreement by the Council the Ministry of Health may seek certain remedies including withholding any monies owing and recovering any monies paid.

The actual chemical cost of dosing fluoride works out at about \$0.0022 per m³ of water, or between \$15,000 and \$20,000 per year. However, other costs such as power, calibrations, repairs, maintenance, monitoring and call outs are likely to make the annual cost closer to \$100,000.

5 Significance and engagement / Te Hira me te Arawhiti

The matters of this Agenda do not trigger the significance criteria outlined in Council's Significance and Engagement Policy, and the public will be informed via agenda publication on the website and updates of the fluoride section on the Council website.

2.2 Solid Waste Bylaw review

Meeting:	Council Briefing
Date of meeting:	13 November 2024
Reporting officer:	Louis Rattray, Manager Parks & Recreation

1 Purpose / Te Kaupapa

To introduce the statutory review of Council's Solid Waste Bylaw and set out the programme.

2 Background / Horopaki

Council's [Solid Waste Management Bylaw](#) (the Bylaw) was last reviewed in 2013. Council must review this Bylaw in accordance with statutory requirements and this review has now commenced.

A bylaw review must meet a range of statutory requirements, and this report provides an overview of these, together with a proposed timeline.

3 Discussion / Whakawhiti kōrero

The purpose of the Bylaw is to provide a regulatory mechanism to support Council's general solid waste management functions as well as the objectives of Council's Waste Management and Minimisation Plan. The Bylaw includes provisions relating to ownership of the solid waste stream, including recycling, and the associated collection, transfer, storage and disposal functions.

Legislative framework

Any bylaw must be enacted in accordance with the relevant legislative provisions. A bylaw concerning solid waste matters is authorised by Section 146 of the Local Government Act 2002 (LGA) and Section 56 of the Waste Minimisation Act 2008 (WMA). These sections establish the foundation for the content and focus of a solid waste bylaw.

Section 146 of the LGA provides a broader framework, while Section 56 of the WMA offers a more specific focus, including stipulating that a bylaw must not be inconsistent with Council's waste management and minimisation plan. Council's current Solid Waste Bylaw is made under both the LGA and the WMA.

The Bylaw was amended following a review in August 2013. Bylaws enacted under the LGA and the WMA must be reviewed ten years after their last review (Section 159 LGA). This review process is being undertaken after this ten-year period.

In accordance with Section 160A of the LGA therefore, the current Bylaw will be automatically revoked two years after its last review. Therefore, Council must consider enacting a new Bylaw before the end of this period to ensure continuity of the regulatory mechanisms provided through the Bylaw.

Timeline

The review process and associated timetable in Table 1 below has been developed to meet these requirements.

Table 1

Review element	Meeting/Item	Date(s)
Overview of Bylaw review process and initial findings	Council Briefing	13-Nov
Issues and Options	Council Briefing	28-Nov
S155 determinations and SOP adoption	Council Meeting	13-Feb
<i>Consultation</i>	<i>NA</i>	<i>17 Feb - 17 Mar</i>
Hearings	Council Meeting	25-Mar
Deliberations	Council Meeting	10-Apr
Council decision	Council Meeting	27-Jun - 2024

Engagement activities

The review has already commenced with desktop research and analysis being undertaken as well as internal stakeholder engagement. External stakeholder engagement activities are scheduled to be completed before the Christmas break period.

Due to the nature and scope of this Bylaw it is not deemed necessary to undertake any broader informal public engagement activities prior to Council adopting a Statement of Proposal for consultation.

4 Financial/budget considerations / Ngā pānga pūtea/tahua.

This bylaw review is being undertaken in accordance with statutory requirements. At this stage of the review process there are no financial implications for this review.

5 Next steps | E whaiake nei

An item with the detailed findings of the review and the associated issues and options available for Council to consider is scheduled to be presented at the 28 November Briefing.

2.3 Uptake of Severe Weather Emergency Recovery (Waste Management) Order for Cleanfill Development

Meeting: Council Briefing
Date of meeting: 13 November 2024
Reporting officer: Sarah Irwin (Manager Infrastructure Planning)

1 Purpose / Te Kaupapa

To discuss the uptake of the Severe Weather Emergency Recovery (Waste Management) Order prior to seeking Council approval.

2 Background / Horopaki

On the 8 September 2023 the Ministry for the Environment (MfE) released the Severe Weather Emergency Recovery (Waste Management) Order to simplify the construction of new Class 2 - Class 5 landfills and temporary waste facilities required to dispose of waste generated by severe weather events. This Order was developed following Cyclone Gabrielle whereby unprecedented quantities of sediment, debris and construction and demolition waste required safe disposal.

The Purewa landfill operation is a class 1 landfill. All waste diverted to this operation is subject to the Class 1 landfill levy rates as outlined in Table 1. The impact of this is twofold, higher landfill disposal costs for managed or controlled fill and secondly much of this waste bypasses Purewa and is transported to Redvale landfill in Auckland that has a separate class 3 operation.

Not having a facility in Northland effects both the contracting industry and Council with high costs of disposal or time, transport costs and associated emissions if using Redvale.

Schedule 2 Levy rate

r 5

Schedule 2: replaced, on 1 July 2024, by [section 14](#) of the Waste Minimisation (Waste Disposal Levy) Amendment Act 2024 (2024 No 21).

Prescribed disposal facility	Levy rate for period 1 July 2024 to 30 June 2025 (\$ per tonne)	Levy rate for period 1 July 2025 to 30 June 2026 (\$ per tonne)	Levy rate for period 1 July 2026 to 30 June 2027 (\$ per tonne)	Levy rate on and from 1 July 2027 (\$ per tonne)
Construction and demolition fill disposal facility: class 2	30	35	40	45
Managed or controlled fill disposal facility: classes 3 and 4	10	15	15	20
Municipal disposal facility: class 1	60	65	70	75

Table 1 – landfill levy rates (Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Regulations 2009)

The Order temporarily amends the Resource Management Act (1991) (RMA) to change Class 2 - Class 5 landfill activity statuses in the Act, thereby making it simpler to compile and process a landfill Resource Consent application. The environmental impacts associated with the development of a landfill remains a priority, and as such the Order requires adherence to the Technical Guidelines for Disposal to Land.

Council has been approached by Northland Waste on behalf of the Northland Regional Landfill Limited Partnership (NRLLP) with a proposal to develop a Class 3 and 4 landfill site within land currently owned by the NRLLP.

3 Discussion / Whakawhiti kōrero

There is an opportunity for the NRLLP to utilize the delegations provided to Whangarei District Council under the Severe Weather Emergency Recovery (Waste Management) Order.

At present there is no viable waste infrastructure in Northland to deal with material appropriate for class 2 – 5 filling. This is evidenced through the continuous enquiries from the Northland community, civil sector and roading contractors wishing to dispose clean material. The demand in these enquiries significantly spiked following weather events where slips and erosion occurred, evidenced during Cyclone Gabrielle and other recent extreme weather events. These events required stockpiling of significant volumes of dirt and debris from slips on the roadside before the material was hauled from Northland (past the Portland facility gate) to be disposed of at existing clean fill facilities in Auckland, resulting in increased transport cost and associated transport emissions for Northland’s Council’s and the civil industry.

Establishment of a suitable facility under this Legislation will provide Whangarei and wider Northland with the capacity for the disposal of clean fill associated with the remaining cleanup of previous events and establishes a local facility to cater for any future weather event fill disposal requirements.

Furthermore, it is envisaged that the future construction of the alternative Brynderwyn roading corridor to resolve the transport network resilience issues recently experienced during significant weather events will see further demand for suitable clean fill facilities in Northland.

A Class 4 landfill can receive clean fill and controlled fill, while a Class 3 landfill can receive clean fill, controlled fill and managed fill. The technical requirements for construction and operation of the two landfill classes are provided in Table 1 below.

Table 1: Class 3 and Class 4 landfill requirements

LANDFILL	CLASS 4	CLASS 3
Waste types to be received	<ul style="list-style-type: none"> Clean fill Controlled fill 	<ul style="list-style-type: none"> Clean fill Controlled fill Managed fill
Activity Type as per RMA (amended as per Order)	<ul style="list-style-type: none"> Permitted activity 	<ul style="list-style-type: none"> Controlled activity
Technical requirements	<ul style="list-style-type: none"> Environmental Assessment of site. 	<ul style="list-style-type: none"> Environmental Assessment of site.

	<ul style="list-style-type: none"> • Location and transport considerations. • Erosion control (sediment runoff). • Groundwater monitoring. 	<ul style="list-style-type: none"> • Location and transport considerations. • Groundwater monitoring. • Surface water monitoring. • Capping.
Environmental & cultural restrictions	<ul style="list-style-type: none"> • Located 10m from any wetland. • Must not result in drainage of wetland. • Not located in significant natural area. • Not located on culturally significant land unless written permission given. • Cannot be located within the coastal marine area or in the bed of a lake or river. 	<ul style="list-style-type: none"> • Located 10m from any wetland. • Must not result in drainage of wetland. • Not located in significant natural area. • Not located on culturally significant land unless written permission given. • Cannot be located within the coastal marine area or in the bed of a lake or river.

Northland Waste on behalf of the Northland Regional Landfill Limited Partnership (NRLLP) have identified a suitable site for the type 3 and 4 landfill. Utilising the delegations in the Severe Weather Emergency Recovery (Waste Management) Order is proposed as an effective solution to provide this facility in a timely fashion.

As Whangarei District Council is included on the list of implementing agencies we are entitled to implement the Order ourselves, or have the Order implemented on our behalf by another party. As Council does not operate any landfills, we are proposing that the NRLLP be the implementing party on behalf of Council.

A few key dates are critical to the proposal. These are listed as follows:

1. The Order is only valid until 31 March 2028. Thus, operation of any developed landfill under the Order can only occur up until 31 March 2028. Should the landfill continue to operate beyond this date, the landfill will need to be consented as per the standard requirements of the RMA, with obvious effects being established that would be a straightforward process.
2. An Applicant needs to invoke the Order before **20 September 2025** (i.e. the landfill facility needs to be operating before 20 September 2025). This means:
 - i) The identified site/s need to be assessed in terms of any potential environmental constraints
 - ii) A Landfill Engineer will need to be engaged to determine the best layout and design to accommodate a Class 3 or Class 4 landfill
 - iii) Council approval/consent will need to be granted, and
 - iv) The supporting infrastructure such as access roads will require construction, and the actual landfill site established.

The decision to be requested from Council relates solely to point 2 (iii). The other conditions and any associated costs will be the responsibility of the NRLLP, subject to approval from the NRLLP board at their November Board meeting.

By providing this delegation to NRLLP the development of a facility that provides a local option for the disposal of Clean fill, Controlled fill and Managed fill would have operational

benefits (cost and time) to Council as well as for the wider contractor network. This is especially relevant in the management of disaster waste during and after an emergency, something that the Northland region did not have during Cyclone Gabrielle. There is no risk to Council in providing the delegation to the NRLLP. The decision to take up and progress the construction and operations will be subject to an appropriate business case being developed by and approved by the NRLLP board.

4 Financial/budget considerations / Ngā pānga pūtea/tahua

There are no direct cost implications for Council of delegating the establishment of a Class 3 or 4 landfill under the Severe Weather Emergency Recovery (Waste Management) Order to NRLLP. There may be savings to operations and projects with reduced landfill and/or transport costs once such a facility is operational. However as noted above, the decision to progress the project will be subject to an appropriate business case being developed by and approved by the NRLLP board. Until this is completed it is not known if there are financial impacts or benefits for Councils through the joint venture.

5 Significance and engagement / Te Hira me te Arawhiti

The decisions or matters of this Agenda do not trigger the significance criteria outlined in Council's Significance and Engagement Policy, and the public will be informed via agenda publication on the website.

6 Attachments / Ngā Tāpiritanga

Attachment 1 - Severe Weather Emergency Recovery (Waste Management) Order



Severe Weather Emergency Recovery (Waste Management) Order 2023

Cindy Kiro, Governor-General

Order in Council

At Wellington this 18th day of September 2023

Present:

Her Excellency the Governor-General in Council

This order is made under section 7 of the Severe Weather Emergency Recovery Legislation Act 2023—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for the Environment made in accordance with section 8(1) and (2) of that Act.

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**Severe Weather Emergency Recovery (Waste
Management) Order 2023**

2023/254

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Order

1 Title

This order is the Severe Weather Emergency Recovery (Waste Management) Order 2023.

2 Commencement

This order comes into force on 20 September 2023.

Part 1 Preliminary provisions

Revocation

3 Revocation

This order is revoked on the close of 31 March 2028.

4 Effect of revocation on status of activities under this order

- (1) An activity that is a permitted or controlled activity by virtue of this order—
 - (a) retains that status for the duration of this order; but
 - (b) does not retain that status after this order is revoked.
- (2) An activity undertaken in reliance on this order does not—
 - (a) give rise to, or create, any existing use right for the land or structures after the revocation of this order; or
 - (b) qualify for—
 - (i) a certificate of compliance under section 139 of the RMA; or
 - (ii) an existing use certificate under section 139A of the RMA.

Effect of order

5 Landfills and temporary waste facilities must comply with other requirements

This order does not affect any other legal obligations in respect of landfills or temporary waste facilities, including obligations under the Waste Minimisation Act 2008.

6 Review of operation of order

The Secretary for the Environment must, not later than 20 September 2024, report to the Minister on the operation of this order, including—

- (a) whether the order is, or will no longer be, needed to assist communities and local authorities affected by the severe weather events to respond to, and recover from, the impacts of the severe weather events; and
- (b) a proposed date or dates for the revocation of the order if the Secretary for the Environment reports under paragraph (a) that the order is or will be no longer needed.

Interpretation

7 Interpretation

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

activity means, as the case requires, any or all of the following:

- (a) a class 2 or 3 landfill activity:
- (b) a class 4 or 5 landfill activity:
- (c) a temporary waste activity

class 2 landfill means a landfill that accepts waste for a class 2 C&D landfill according to section 6.2 of the technical guidelines

class 2 or 3 landfill activity means the construction, operation, or closure of a class 2 or 3 landfill

class 3 landfill means a landfill that accepts waste for a class 3 managed fill according to section 6.2 of the technical guidelines

class 4 landfill means a landfill that accepts waste for a class 4 controlled fill according to section 6.2 of the technical guidelines

class 4 or 5 landfill activity means the construction, operation, or closure of a class 4 or 5 landfill

class 5 landfill means a landfill that accepts waste for a class 5 clean fill according to section 6.2 of the technical guidelines

consent authority means, as the case requires, 1 or more of the following:

- (a) a local authority listed in clause 8(1):
- (b) Bay of Plenty Regional Council:
- (c) Northland Regional Council:
- (d) Waikato Regional Council

culturally significant land is land that—

- (a) is on, or adjoins, a wāhi tapu or a site of cultural significance; or
- (b) is on, or adjoins, land that has an area that is subject to a statutory acknowledgement; or

- (c) is within, is adjacent to, or directly affects the statutory overlay of ngā rohe moana and ngā rohe moana o ngā hapū o Ngāti Porou, as described in section 11 and Schedule 3 of the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019

disposal has the meaning given in section 6 of the Waste Minimisation Act 2008

KiwiRail has the meaning given in section 5(1) of the Land Transport Management Act 2003

landfill means a class 2, 3, 4, or 5 landfill, as the case requires

operator means the person in control of a landfill or temporary waste facility, as the case requires

post-settlement governance entity has the meaning given in section 9 of the Urban Development Act 2020

RMA means the Resource Management Act 1991

severe weather event has the meaning given in section 4(1) of the Severe Weather Emergency Recovery Legislation Act 2023

site management plan means a plan that meets the requirements in Schedule 3

specified statutory overlay means the statutory overlay of ngā rohe moana and ngā rohe moana o ngā hapū o Ngāti Porou in the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, as described in section 11 and Schedule 3 of that Act

statutory acknowledgement means redress of that name included in certain Treaty settlement Acts

technical guidelines means the *Technical Guidelines for Disposal to Land* published by the Waste Management Institute New Zealand Incorporated (Revision 3.1, September 2023)

temporary waste activity means the construction, operation, or closure of a temporary waste facility

temporary waste facility—

- (a) means a waste depot or storage facility; but
- (b) does not include a disposal facility (within the meaning of that term in section 7(1) of the Waste Minimisation Act 2008)

wāhi tapu or site of cultural significance includes those identified in any of the following:

- (a) a relevant plan or proposed plan:
- (b) the New Zealand Archaeological Association's site recording scheme:
- (c) a list maintained under section 65 or 81 of the Heritage New Zealand Pouhere Taonga Act 2014:

- (d) section 11 and Schedule 3 of the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019;
- (e) the records of the Māori Land Court as a site set apart as a Māori reservation under Part 17 of Te Ture Whenua Maori Act 1993

Waka Kotahi means the New Zealand Transport Agency established under section 93 of the Land Transport Management Act 2003

waste—

- (a) has the meaning given in section 5(1) of the Waste Minimisation Act 2008; and
 - (b) includes debris and sediment.
- (2) Copies of the guidelines incorporated by reference in the definition of technical guidelines are—
- (a) available, free of charge, on an Internet site operated by the Ministry for the Environment; and
 - (b) available for inspection, free of charge, at the head office of the Ministry for the Environment and at other places that the Secretary for the Environment determines are appropriate.
- (3) A term used in this order that is defined in the RMA, but not in this order, has the meaning given in the RMA.
- (4) The modification of legislation by this order does not affect the text of the legislation, but requires it to be read as if amended in the manner indicated by this order.

Application

8 Application

- (1) This order applies only to an activity that is described in subclause (2) and that is carried out in—
- (a) the district of any of the following territorial authorities:
 - (i) Auckland Council;
 - (ii) Central Hawke’s Bay District Council;
 - (iii) Far North District Council;
 - (iv) Gisborne District Council;
 - (v) Hastings District Council;
 - (vi) Hauraki District Council;
 - (vii) Kaipara District Council;
 - (viii) Napier City Council;
 - (ix) Thames-Coromandel District Council;
 - (x) Wairoa District Council;

- (xi) Western Bay of Plenty District Council:
- (xii) Whangarei District Council:
- (b) the region of the Hawke's Bay Regional Council.
- (2) This order applies to an activity that—
 - (a) would require a resource consent under section 9, 14, or 15 of the RMA; and
 - (b) has any status other than that of a permitted activity under—
 - (i) the district or regional plan of a local authority; or
 - (ii) a national environmental standard.
- (3) This order does not apply to an activity in respect of a landfill or temporary waste facility that begins operating on or after 20 September 2025.

Part 2

Class 4 or 5 landfill activity or temporary waste activity where construction work began on or after 8 January but before 20 September 2023

9 Class 4 or 5 landfill activity is permitted activity if requirements met

- (1) A class 4 or 5 landfill activity is a permitted activity under section 87A(1) of the RMA if—
 - (a) the activity is in respect of a class 4 or 5 landfill for which the construction work began on or after 8 January 2023 but before 20 September 2023; and
 - (b) the activity is carried out by or on behalf of a local authority listed in clause 8(1), Waka Kotahi, or KiwiRail; and
 - (c) the activity is necessary for the disposal of waste from a severe weather event; and
 - (d) the activity complies with the requirements, conditions, and permissions in Schedule 1 on and from 20 September 2023.
- (2) A class 4 or 5 landfill activity that is a permitted activity under this clause must be treated as a permitted activity for the purposes of the RMA and any secondary legislation, plan, proposed plan, or rule made under the RMA.

10 Temporary waste activity is permitted activity if requirements met

- (1) A temporary waste activity is a permitted activity under section 87A(1) of the RMA if—
 - (a) the activity is in respect of a temporary waste facility for which the construction work began on or after 8 January 2023 and before 20 September 2023; and

- (b) the activity is carried out by or on behalf of a local authority listed in clause 8(1), Waka Kotahi, or KiwiRail; and
 - (c) the activity is necessary for the storage or sorting of waste from a severe weather event; and
 - (d) the activity complies with the requirements, conditions, and permissions in Schedule 1 on and from 20 September 2023.
- (2) A temporary waste activity that is a permitted activity under this clause must be treated as a permitted activity for the purposes of the RMA and any secondary legislation, plan, proposed plan, or rule made under the RMA.

Part 3

Class 4 or 5 landfill activity, temporary waste activity, or class 2 or 3 landfill activity where construction work begins on or after 20 September 2023

Permitted activities

11 Class 4 or 5 landfill activity is permitted activity if requirements met

- (1) A class 4 or 5 landfill activity is a permitted activity under section 87A(1) of the RMA if—
- (a) the activity is in respect of a class 4 or 5 landfill for which the construction work begins on or after 20 September 2023; and
 - (b) the activity is carried out by or on behalf of a local authority listed in clause 8(1), Waka Kotahi, or KiwiRail; and
 - (c) the activity is necessary for the disposal of waste from a severe weather event; and
 - (d) the activity complies with the location requirements in clause 14(1); and
 - (e) the activity complies with the requirements, conditions, and permissions in Schedule 2.
- (2) A class 4 or 5 landfill activity that is a permitted activity under this clause must be treated as a permitted activity for the purposes of the RMA, and any secondary legislation, plan, proposed plan, or rule made under the RMA.

12 Temporary waste activity is permitted activity if requirements met

- (1) A temporary waste activity is a permitted activity under section 87A(1) of the RMA if—
- (a) the activity is in respect of a temporary waste facility for which the construction work begins on or after 20 September 2023; and
 - (b) the activity is carried out by or on behalf of a local authority listed in clause 8(1), Waka Kotahi, or KiwiRail; and

- (c) the activity is necessary for the storage or sorting of waste from a severe weather event; and
 - (d) the activity complies with the location requirements in clause 14(1); and
 - (e) the activity complies with the requirements, conditions, and permissions in Schedule 2.
- (2) A temporary waste activity that is a permitted activity under this clause must be treated as a permitted activity for the purposes of the RMA, and any secondary legislation, plan, proposed plan, or rule made under the RMA.

Controlled activities

13 Class 2 or 3 landfill activity is controlled activity if requirements met

- (1) A class 2 or 3 landfill activity is a controlled activity under section 87A(2) of the RMA if—
- (a) the activity is in respect of a class 2 or 3 landfill for which the construction work begins on or after 20 September 2023; and
 - (b) the activity is carried out by or on behalf of a local authority listed in clause 8(1), Waka Kotahi, or KiwiRail; and
 - (c) the activity is necessary for the disposal of waste from a severe weather event; and
 - (d) the activity complies with the location requirements in clause 14(1); and
 - (e) the activity complies with the requirements, conditions, and permissions in Schedule 2.
- (2) A class 2 or 3 landfill activity that is a controlled activity under this clause must be treated as a controlled activity for the purposes of the RMA, and any secondary legislation, plan, proposed plan, or rule made under the RMA.
- (3) Section 87A(2)(c) of the RMA does not apply in relation to the class 2 or 3 landfill activity.

Location requirements for permitted and controlled activities

14 Location requirements

- (1) For the purposes of clauses 11(1)(d), 12(1)(d), and 13(1)(d), the location requirements for a landfill activity or temporary waste activity are that—
- (a) the landfill or temporary waste facility must be located at least 10 metres from a natural inland wetland or water body, whether intermittently or permanently flowing; and
 - (b) the activity must not result in partial or complete drainage of a natural inland wetland; and
 - (c) the landfill or temporary waste facility must not be located within a significant natural area; and

- (d) the activity must not be undertaken on culturally significant land, and must not impact on culturally significant land, except with the written permission of the relevant post-settlement governance entity, iwi, or hapū after having been given notice by the operator of the landfill or temporary waste facility in accordance with subsection (2).
- (2) The notice referred to in subclause (1)(d) must be given to the relevant post-settlement governance entity, iwi, or hapū at least 20 working days before the activity is undertaken and must include—
 - (a) details of the proposed activity to be undertaken; and
 - (b) the proximity of the proposed activity to the wāhi tapu, site of cultural significance, or area subject to a statutory acknowledgement or specified statutory overlay; and
 - (c) the anticipated effect of the proposed activity on the wāhi tapu, site of cultural significance, or area subject to a statutory acknowledgement or specified statutory overlay and proposals to avoid, remedy, or mitigate the effect; and
 - (d) a request for permission from the relevant post-settlement governance entity, iwi, or hapū to undertake the proposed activity; and
 - (e) a request for protocols or management plans in relation to the wāhi tapu, site of cultural significance, or area subject to a statutory acknowledgement or specified statutory overlay.

Application for resource consent

15 Making application for resource consent for class 2 or 3 landfill activity

- (1) Section 88(2) to (5) of the RMA does not apply to an application for a resource consent for a class 2 or 3 landfill activity that is a controlled activity under clause 13(1).
- (2) Instead, an application for a resource consent for a class 2 or 3 landfill activity must include—
 - (a) the applicant's name and contact details; and
 - (b) the name and address of any owner or occupier of the land on which the landfill is sited or proposed to be sited; and
 - (c) a brief description of the need for the landfill activity as it relates to a severe weather event; and
 - (d) the type and volume of material anticipated to be disposed of over the life of the landfill; and
 - (e) a description of the location of the landfill and a broad description of the works to be carried out on the site, accompanied by a map of the area that includes waterways and wetlands within 150 metres of the site; and

- (f) a desktop assessment using all reasonably available information and input from appropriate experts that includes—
 - (i) an assessment of the extent to which the proposed landfill is consistent with the relevant technical guidelines; and
 - (ii) any steps proposed to be taken by the operator to avoid or minimise adverse effects on the environment; and
- (g) a description of any consultation undertaken relating to the siting and operation of the landfill in the proposed location, including with any relevant post-settlement governance entity, iwi authority, and hapū; and
- (h) a site management plan.

16 Application to be determined on non-notified basis

- (1) Subclause (2) applies instead of sections 95 to 99A of the RMA.
- (2) An application for a resource consent for a class 2 or 3 landfill activity that is a controlled activity under clause 13(1)—
 - (a) must not be publicly notified or given limited notification; but
 - (b) must be determined in accordance with Part 6 of the RMA, unless otherwise specified by this order.

17 Consultation with specified persons

- (1) As soon as practicable after an application for a resource consent for a class 2 or 3 landfill activity is lodged with a consent authority, the consent authority must notify the persons specified in subclause (2) that the application has been lodged and the notification must—
 - (a) invite those persons to make written comments on the application; and
 - (b) specify the date by which written comments are to be received by the consent authority (which must be at least 15 working days after receiving the notification).
- (2) The persons are—
 - (a) any relevant post-settlement governance entity, iwi authority, and hapū within whose rohe the landfill is proposed to be located; and
 - (b) each local authority in whose district or region the landfill is proposed to be located; and
 - (c) any network utility operator that undertakes a network utility operation in, on, or under the land where the landfill is proposed to be located; and
 - (d) the owners and occupiers of land that has a boundary directly contiguous with the land on which the landfill is proposed to be located; and
 - (e) any requiring authority that holds a designation over the land where the landfill is proposed to be located; and

- (f) any other person that the consent authority considers appropriate, provided that the consent authority is satisfied that the person has an interest in the proceedings greater than the interest of the general public.
- (3) A notification under subclause (1) must be treated as a document to be served for the purposes of the RMA and section 352 of the RMA applies accordingly.
- (4) A person invited to make written comments under this clause 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.
- (5) A person who makes written comments to a consent authority under this clause must not be treated under the RMA as a person making a submission on the application.

18 Determination of application

When determining an application for a resource consent for a class 2 or 3 landfill activity that is a controlled activity under clause 13(1),—

- (a) the consent authority must have regard to comments provided under clause 17 when considering whether to impose conditions on the consent under section 108(1) of the RMA; and
- (b) the consent authority need not have regard to the matters in section 104(1)(b) or 105 of the RMA when considering the application; and
- (c) if the resource consent is a discharge permit, the consent authority is deemed to be satisfied of the matters in section 107(2) of the RMA; and
- (d) the period during which comments are sought under clause 17 is excluded from the time limits in section 115 of the RMA.

19 Consent authority may impose conditions only in respect of certain matters

- (1) Section 104A(b) of the RMA does not apply when a consent authority is imposing conditions on a resource consent for a class 2 or 3 landfill activity that is a controlled activity under clause 13(1).
- (2) Instead, a consent authority may impose conditions only in respect of the following matters:
 - (a) landfill design;
 - (b) mitigating the effects of airborne contaminants;
 - (c) the best practicable option to avoid noise emissions and mitigate the effects of noise beyond the property boundary;
 - (d) managing hazardous materials;

- (e) the source, location, method, rate, volume, timing, or frequency of any water take:
- (f) managing discharges to land and water, including stormwater and passive discharges:
- (g) avoiding contaminants entering water:
- (h) managing landfill gas and leachate (for class 2 landfills only):
- (i) monitoring of environmental receptors, including in respect of water-courses, air, and groundwater:
- (j) managing litter, odours, and pests:
- (k) managing traffic to, from, and within the site:
- (l) closure of the site:
- (m) consistency with relevant technical guidelines.

Part 4

Other matters applying to landfills and temporary waste facilities

20 Administrative charges in respect of permitted activities

- (1) This clause modifies section 36(1)(cc) of the RMA.
- (2) A local authority may fix charges for monitoring under section 36(1)(cc) of the RMA despite the authority not being empowered to charge for monitoring in accordance with section 43A(8) of the RMA.

Schedule 1

Requirements, conditions, and permissions for purposes of Part 2

cls 9, 10

1 Application of technical guidelines to landfills

The landfill to which the activity relates must be operated and monitored in accordance with the relevant technical guidelines, to the extent practicable.

2 Managing and closing of landfill or temporary waste facility in accordance with site management plan

The landfill or temporary waste facility to which the activity relates must be managed and closed in accordance with a site management plan.

3 Discharges and contaminants

The operator of the landfill or temporary waste facility to which the activity relates must operate it in a manner to avoid noxious, dangerous, offensive, or objectionable discharges of dust or other contaminants beyond the boundary of the property on which the landfill or facility is sited.

4 Notification of landfill or temporary waste activity

- (1) The operator of the landfill or temporary waste facility to which the activity relates must notify the following persons of the landfill or temporary waste activity:
 - (a) owners and occupiers of land adjacent to the landfill or facility site;
 - (b) any relevant post-settlement governance entity, iwi authority, or hapū.
- (2) The notification must be given before the close of 18 October 2023.

5 Providing site management plan

- (1) The operator of the landfill or temporary waste facility to which the activity relates must provide a site management plan to the relevant territorial authority and regional council.
- (2) The site management plan must be provided before the close of 18 October 2023.

6 Amending site management plan

- (1) The operator of the landfill or temporary waste facility to which the activity relates—
 - (a) may amend the site management plan at any time to reflect changes in the landfill or temporary waste facility's design, maintenance or operation, or closure methods, or the management of effects;
 - (b) must amend the site management plan if required by the relevant local authority because the local authority considers that,—

- (i) in respect of a landfill, the site management plan is—
 - (A) insufficient to manage adverse effects appropriately; or
 - (B) inconsistent with the relevant technical guidelines; or
 - (ii) in respect of a temporary waste facility, the site management plan is insufficient to manage adverse effects appropriately.
- (2) The operator must provide a copy of any amended site management plan to the relevant local authority within 10 working days—
 - (a) after the operator makes the amendment under subclause (1)(a); or
 - (b) after the relevant local authority notifies the operator that an amendment is required under subclause (1)(b).

Schedule 2

Requirements, conditions, and permissions for purposes of Part 3

cls 11–13

1 Application of technical guidelines to landfills

The landfill to which the activity relates must be sited, designed, operated, and monitored in accordance with the relevant technical guidelines, to the extent practicable.

2 Constructing, managing, and closing landfill or temporary waste facility in accordance with site management plan

The landfill or temporary waste facility to which the activity relates must be constructed, managed, and closed in accordance with a site management plan.

3 Discharges and contaminants

The operator of the landfill or temporary waste facility to which the activity relates must operate it in a manner to avoid noxious, dangerous, offensive, or objectionable discharges of dust or other contaminants beyond the boundary of the property on which the landfill or facility is sited.

4 Notification of landfill or temporary waste activity

- (1) The operator of the landfill or temporary waste facility to which the activity relates must notify the following persons of the landfill or temporary waste activity:
 - (a) owners and occupiers of land adjacent to the landfill or facility site;
 - (b) any relevant post-settlement governance entity, iwi authority, or hapū.
- (2) The notification must be made at least 10 working days before the construction work for the landfill or facility begins.

5 Providing site management plan

- (1) The operator of the landfill or temporary waste facility to which the activity relates must provide a site management plan to the relevant territorial authority and regional council.
- (2) The site management plan must be provided at least 10 working days before the construction work for the landfill or temporary waste facility begins.

6 Amending site management plan

- (1) The operator of the landfill or temporary waste facility to which the activity relates—
 - (a) may amend the site management plan at any time to reflect changes in design, maintenance, operation, or closure methods, or the management of effects:

-
- (b) must amend the site management plan if required by the relevant local authority because the local authority considers that,—
 - (i) in respect of a landfill, the site management plan is—
 - (A) insufficient to manage adverse effects appropriately; or
 - (B) inconsistent with the relevant technical guidelines; or
 - (ii) in respect of a temporary waste facility, the site management plan is insufficient to manage adverse effects appropriately.
 - (2) The operator must provide a copy of any amended site management plan to the relevant local authority within 10 working days—
 - (a) after the operator makes the amendment under subclause (1)(a); or
 - (b) after the relevant local authority notifies the operator that an amendment is required under subclause (1)(b).

Schedule 3

Contents of site management plan

cl 7(1)

A site management plan must include, in relation to the landfill or temporary waste facility to which it relates, the following information:

- (a) roles and responsibilities of the operator and site management staff in respect of the landfill or temporary waste facility:
- (b) contact details for the landfill or facility manager:
- (c) procedures for identifying, controlling, and managing hazards (including fire hazards):
- (d) procedures for handling hazardous materials:
- (e) procedures for managing dust and other airborne contaminants so that they do not spread beyond the boundary of the property on which the landfill or facility is sited:
- (f) procedures for managing stormwater:
- (g) procedures for avoiding contaminants entering water:
- (h) procedures for managing noise and controlling nuisances (including litter, odour, and pests):
- (i) measures to manage light spill:
- (j) procedures for managing any water take:
- (k) procedures for managing traffic accessing the facility including the likely route or routes traffic will take to access the landfill or facility:
- (l) for a landfill, procedures for record keeping and verification sampling in accordance with the relevant technical guidelines for the class of landfill:
- (m) details of the process to identify, record, and investigate complaints:
- (n) procedures for responding to queries and complaints:
- (o) procedures for closing the landfill or facility, including site remediation if necessary as a result of the activity.

Rachel Hayward,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order is made under section 7 of the Severe Weather Emergency Recovery Legislation Act 2023 and its effect is temporary. The order comes into force on 20 September 2023 and it will be revoked on the close of 31 March 2028.

The order modifies the Resource Management Act 1991 (the **RMA**) by treating particular activities in respect of temporary waste facilities and some types of landfills as permitted activities, subject to certain requirements in the order being met. Particular activities in respect of other types of landfills are treated as controlled activities subject to certain requirements in the order being met.

Part 1

Clause 4 makes it clear that activities that are permitted or controlled activities under the order lose that status on the revocation date in *clause 3* or any earlier date on which the order is revoked. Activities in respect of a temporary landfill or waste facility beyond the date of revocation of this order are subject to the resource management regime in operation after revocation of this order.

Clause 5 makes it clear that landfills and temporary waste facilities must still comply with other legal obligations, including the Waste Minimisation Act 2008.

Clause 6 requires the Secretary for the Environment to report to the Minister for the Environment on the operation of the order not later than 20 September 2024. The report must include advice as to whether the order is still needed to respond to, and recover from, the impacts of the severe weather events. If the Secretary advises that the order is or will no longer be needed, the report must include a proposed date or dates for revocation of the order.

Clause 7 sets out definitions for terms used in the order.

The classes of landfills covered by the order are defined by reference to the *Technical Guidelines for Disposal to Land* published by the Waste Management Institute New Zealand Incorporated (Revision 3.1, September 2023). The guidelines are available from the Ministry for the Environment as specified in *clause 7(2)*.

A site management plan is a key requirement in respect of activities covered by the order. The information a site management plan must include is set out in *Schedule 3*.

Clause 8 limits the application of the order to landfill and temporary waste activities to which the following requirements apply:

- a consent would be required for the activity under section 9, 14, or 15 of the RMA and the activity has any status other than that of permitted activity under the district or regional plan of a local authority or a national environmental standard:
- the activity is carried out in the district of one of the listed territorial authorities or the region of the Hawke's Bay Regional Council.

This clause also provides that the order does not apply with respect to a landfill or temporary waste facility that begins operating on or after 20 September 2025.

Part 2

Clause 9 provides that a class 4 or 5 landfill activity is a permitted activity if—

- the activity is in respect of a class 4 or 5 landfill for which the construction work began on or after 8 January but before 20 September 2023; and
- the activity is carried out by or on behalf of a local authority listed in *clause 8(1)*, the New Zealand Transport Agency (**Waka Kotahi**), or KiwiRail Holdings Limited (**KiwiRail**); and
- the activity is necessary for the disposal of waste from a severe weather event; and
- the activity complies with *Schedule 1* on and from 20 September 2023.

Clause 10 provides that a temporary waste activity is a permitted activity if—

- the activity is in respect of a temporary waste facility for which the construction work began on or after 8 January but before 20 September 2023; and
- the activity is carried out by or on behalf of a local authority listed in *clause 8(1)*, Waka Kotahi, or KiwiRail; and
- the activity is necessary for the storage or sorting of waste from a severe weather event; and
- the activity complies with *Schedule 1* on and from 20 September 2023.

Part 3

Clause 11 provides that a class 4 or 5 landfill activity is a permitted activity if—

- the activity is in respect of a class 4 or 5 landfill for which the construction work begins on or after 20 September 2023; and
- the activity is carried out by or on behalf of a local authority listed in *clause 8(1)*, Waka Kotahi, or KiwiRail; and
- the activity is necessary for the disposal of waste from a severe weather event; and
- the activity complies with the location requirements in *clause 14(1)*; and
- the activity complies with *Schedule 2*.

Clause 12 provides that a temporary waste activity is a permitted activity if—

- the activity is in respect of a temporary waste facility for which the construction work begins on or after 20 September 2023; and
- the activity is carried out by or on behalf of a local authority listed in *clause 8(1)*, Waka Kotahi, or KiwiRail; and
- the activity is necessary for the storage or sorting of waste from a severe weather event; and

- the activity complies with the location requirements in *clause 14(1)*; and
- the activity complies with *Schedule 2*.

Clause 13 provides that a class 2 or 3 landfill activity is a controlled activity if—

- the activity is in respect of a class 2 or 3 landfill for which the construction work begins on or after 20 September 2023; and
- the activity is carried out by or on behalf of a local authority listed in *clause 8(1)*, Waka Kotahi, or KiwiRail; and
- the activity is necessary for the disposal of waste from a severe weather event; and
- the activity complies with the location requirements in *clause 14(1)*; and
- the activity complies with *Schedule 2*.

Clause 14 sets out requirements relating to location, which apply to landfills and temporary waste facilities for which construction begins on or after 20 September 2023. Activities in respect of those landfills and temporary waste facilities cannot be a permitted or controlled activity, as the case may be, unless the location requirements are complied with. In summary,—

- the landfill or temporary waste facility must be located at least 10 metres from a natural inland wetland or water body; and
- the activity must not result in partial or complete drainage of a natural inland wetland; and
- the landfill or temporary waste facility must not be located within a significant natural area; and
- the activity must not be undertaken on, or impact on, culturally significant land except with the written permission of the relevant post-settlement governance entity, iwi, or hapū.

Clause 15 provides that section 88(2) to (5) of the RMA does not apply to an application for a resource consent for a class 2 or 3 landfill activity. Instead, the application must include certain specified information.

Clause 16 provides that an application for a resource consent under the order must not be publicly notified or given limited notification. The application must be dealt with in accordance with Part 6 of the RMA except as provided in the order.

Clause 17 provides that the consent authority must notify specified persons that an application for a resource consent has been lodged, invite them to comment on the application, and give them a date by which comments must be received by the consent authority. A person invited to make comments on an application may not appeal under the RMA, or object under Part 14 of the RMA, against the consent authority's decision on the application.

Clause 18 modifies requirements that apply when a consent authority is determining an application for a resource consent.

Clause 19 sets out the matters in respect of which a consent authority may impose resource consent conditions for an activity that is a controlled activity under the order.

Part 4

Clause 20 modifies the effect of section 36(1)(cc) of the RMA so that a local authority may fix charges for monitoring in respect of a permitted activity under the RMA despite the authority not being empowered to charge for monitoring under the RMA.

Schedules

Schedule 1 sets out requirements, permissions, and conditions for the purposes of *Part 2*. In summary, a class 4 or 5 landfill activity or temporary waste activity is not a permitted activity under *Part 2* unless, amongst other things, it complies with *Schedule 1*.

Schedule 2 sets out requirements, permissions, and conditions for the purposes of *Part 3*. In summary, a class 2 or 3 landfill activity, temporary waste activity, or class 4 or 5 landfill activity is not a permitted activity or controlled activity (as the case may be) under *Part 3* unless, amongst other things, it complies with *Schedule 2*.

Schedule 3 sets out the contents required to be included in a site management plan for the purposes of the order.

Statement of reasons

This statement of the Minister's reasons for recommending the making of this order is published in accordance with section 10 of the Severe Weather Emergency Recovery Legislation Act 2023.

The Minister for the Environment (the **relevant Minister**) is satisfied that the order—

- is necessary or desirable for 1 or more purposes of the Severe Weather Emergency Recovery Legislation Act 2023 (the **SWERLA**):
- is no broader than is reasonably necessary to address the matters that gave rise to the order:
- does not breach section 11 of the SWERLA:
- does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990.

Order is necessary or desirable for 1 or more purposes of SWERLA and is appropriate

The Minister is satisfied, for the following reasons, that the order is:

- necessary or desirable for 1 or more purposes of the SWERLA; and
- appropriate.

The volume of waste and debris generated by the severe weather events would exceed the capacity of existing landfills in the affected regions. Waste and debris include a

variety of materials, including green waste, sediment, treated wood, agrichemicals, plastics, wire, and metal as well as waste from the repair or rebuild of housing or transport infrastructure. Failing to manage this waste appropriately could delay the recovery and clean up in the regions affected by the severe weather events and could pose health and safety and environmental risks through unintentional discharge of pollutants or physical injury. A failure to address limited landfill capacity in a timely way may result in landowners stockpiling mixed waste material rather than disposing of it or disposing of it illegally.

Limited landfill capacity may also limit the ability to remove and dispose of sediment efficiently, or to sort and dispose of waste from the repair of housing or transport infrastructure.

Part 1

Under *clause 2*, the order comes into force on 20 September 2023.

Under *clause 3*, the order is revoked on the close of 31 March 2028 and *clause 4* of the order provides that activities undertaken in reliance on the order do not give rise to existing use rights for land or structures.

This is desirable to assist communities and local authorities affected by the severe weather events to respond to, and recover from, the impacts of the severe weather events, whilst recognising that the new landfills and temporary storage and sorting facilities are a temporary response to an extraordinary situation, and they are not a replacement for appropriate long-term waste management strategies.

If the relevant operator wishes to continue operating beyond 31 March 2028, they will need to secure the appropriate resource consents from the relevant local authority.

Clause 5 makes it clear that the order does not affect any other legal obligations in respect of landfills or temporary waste facilities, including obligations under the Waste Minimisation Act 2008.

This is necessary so as to avoid doubt that, when the order is used to establish new landfills or temporary waste facilities, other obligations remain, including those relating to levy payments and reporting under the Waste Minimisation Act 2008.

Under *clause 6*, the Secretary for the Environment must report to the Minister on the operation of this order no later than 20 September 2024. Depending on the outcome of that review, the order may be amended if appropriate or required.

That clause will help to ensure that the order continues to be necessary and desirable (in line with the purposes of the SWERLA) and is no broader than is reasonably necessary.

Clause 7 defines key terms used in the order to ensure clarity and workability. It also includes the incorporation by reference of the *Technical Guidelines for Disposal to Land* published by the Waste Management Institute New Zealand Incorporated (Revision 3.1, September 2023).

That definition helps to ensure that the order references the correct technical guidelines and provides access to them in a way that meets the relevant legislative requirements under the Legislation Act 2019.

Clause 8 addresses the issue of whether the order is no broader than is reasonably necessary. It creates a geographic restriction on the application of the order to those districts and regions that require additional landfills and temporary waste facilities to manage waste and debris generated by the severe weather events. That clause also limits the creation of new landfills and temporary waste facilities to 2 years from 20 September 2023.

That clause confirms that the order applies to activities that would otherwise require a resource consent under section 9, 14, or 15 of the RMA and that would have an activity status other than for a permitted activity.

This will help to ensure that the order continues to be necessary and desirable (in line with the purposes of the SWERLA) and is no broader than is reasonably necessary.

Part 2

This Part covers the activity status of various waste management activities under the order, where those activities have been undertaken on or after 8 January 2023 but before 20 September 2023 (when the order comes into effect).

Clause 9 deals with class 4 and 5 landfills, which accept inert material such as sediment. *Clause 10* deals with temporary waste facilities, which will be used to sort or store waste materials temporarily before being reused, recycled, or disposed of as needed.

Clause 9 provides that a class 4 or 5 landfill activity, in respect of a class 4 or 5 landfill constructed between 8 January 2023 and 20 September 2023, is a permitted activity if—

- it is carried out by or on behalf of a local authority listed in *clause 8(1)*, Waka Kotahi, or KiwiRail; and
- the activity is necessary for the disposal of waste from a severe weather event; and
- the activity complies with the requirements, conditions, and permissions in *Schedule 1*, on and from 20 September 2023.

Clause 10 provides the same requirements in respect of temporary waste facilities.

As outlined above, the volume of waste deposited onto land in affected regions is overwhelming the capacity of landowners and councils to sort, store, and dispose of waste as part of the recovery process. Inadequate ability to store or sort materials or dispose of waste will pose similar risks to health and the environment, such as unintentional discharge, and those risks will also be exacerbated if not addressed in a timely manner. Not having sufficient sites to sort waste could mean that opportunities to separate waste material for recycling or reuse are missed and more waste is disposed of in landfills.

This Part is desirable to assist communities and local authorities affected by the severe weather events to respond to, and recover from, the impacts of the severe weather events, in particular by enabling the recovery process to move forward in a controlled and safe manner and therefore ameliorating risks to the environment and health.

Part 3

This Part covers the activity status of various waste management activities under the order, where those activities have been undertaken on or after 20 September 2023.

Similar to requirements in *clauses 9 and 10*, class 4 or 5 landfill activities and temporary waste activities are permitted activities if—

- they are carried out by or on behalf of a local authority listed in *clause 8(1)*, Waka Kotahi, or KiwiRail; and
- the activities are necessary for the disposal of waste from a severe weather event; and
- the activities comply with the requirements, conditions, and permissions in *Schedule 2*, on and from 20 September 2023.

Class 2 and 3 landfill activities are controlled activities if the same requirements are met.

In addition to these requirements, the activities must also comply with location requirements in *clause 14*. *Clause 14* requires that —

- the landfill or temporary waste facility is more than 10 metres from a natural inland wetland or water body (whether intermittently or permanently flowing); and
- the activity does not partially or completely drain a natural inland wetland; and
- the landfill or temporary waste facility is not located within a significant natural area; and
- the activity is not undertaken on culturally significant land and will not impact on culturally significant land, unless the written approval of the relevant post-settlement governance entity, iwi, or hapū is provided.

Those location requirements are important to limit the environmental effects of the activities (eg, protecting waterways and significant natural areas) as well as to limit impacts on iwi, hapū, and Māori. Given that the order expedites or overrides consent requirements for waste management activities, it is important to ensure that protections are in place so that the environment and cultural considerations are not ignored.

This is desirable to assist communities and local authorities affected by the severe weather events to respond to, and recover from, the impacts of the severe weather events, in particular by enabling the recovery process to move forward in a controlled and safe manner, and therefore ameliorating risks to the environment and health.

The process for seeking a resource consent for class 2 and 3 landfill activities has been streamlined. *Clause 15* sets out the process to make an application for resource

consent for a class 2 or 3 landfill activity that is considered to be a controlled activity under the order. The clause sets out that section 88(2) to (5) of the RMA does not apply and describes the content of an application.

Clause 16 requires that controlled activity applications are determined on a non-notified basis. *Clause 17* requires notification of specified persons as soon as practicable after an application for resource consent is made for class 2 or 3 landfill activities, including an invitation to provide comments within 15 working days, and *clause 18* sets out which sections of the RMA do not apply when a consent authority is considering an application.

Those clauses are necessary and desirable as the streamlined controlled activity consent process expedites the consent process. This means that specified local authorities, Waka Kotahi, and KiwiRail can establish landfills and temporary waste facilities more efficiently so that they can process the large quantities of waste and debris quickly to progress the clean-up and recovery while balancing environmental effects. The requirements for an application also provide the relevant consent authorities with appropriate levels of information to provide certainty that the activity is undertaken in accordance with the provisions in the order and the relevant technical guidelines, and that the activity will manage or mitigate environmental effects.

The requirement to invite specified parties to comment on a controlled activity application means that the relevant people will still have the opportunity to provide comments within a reasonable time frame. The consent authority must take those comments into account when deciding what conditions are required.

Those changes to the consent process are desirable to assist communities and local authorities affected by the severe weather events to respond to, and recover from, the impacts of the severe weather events, in particular—

- by alleviating the burden on existing landfill sites and allowing proper and timely disposal of waste (which will reduce short-, medium-, and long-term risks to health and the environment through improper storage);
- by speeding up the existing consenting process for landfill sites for class 2 and 3 landfills, which is not fit for purpose in emergency recovery circumstances (which necessitate disposal of large volumes of mixed waste).

Clause 19 states that section 104A(b) of the RMA does not apply when a consent authority is imposing conditions on a resource consent for class 2 or 3 landfill activities and provides alternative matters of control.

The matters of control focus on design, management of effects, management of hazardous substances, closure of the site, and the extent of consistency with the relevant technical guidelines.

The consent authority is limited to imposing conditions in relation to the following matters of control:

- landfill design:
- mitigating the effects of airborne contaminants:

- the best practicable option to avoid noise emissions and mitigate the effects of noise beyond the property boundary:
- managing hazardous materials:
- the source, location, method, rate, volume, timing, or frequency of any water take:
- managing discharges to land and water, including stormwater and passive discharges:
- avoiding contaminants entering water:
- managing landfill gas and leachate (for class 2 landfills only):
- environment receptor monitoring, including in respect of watercourses, air, and groundwater:
- managing litter, odours, and pests:
- managing traffic to, from, and within the site:
- closure of the site:
- ensuring consistency with the relevant technical guidelines.

Those changes in respect of the matters of control are desirable to focus the consent conditions on the matters that are most relevant for managing the potential adverse effects that may arise from a class 2 or 3 landfill activity.

Part 4

Clause 20 modifies the RMA to enable a local authority to fix charges for monitoring of permitted activities. This is necessary to ensure that local authorities have the means to ensure that those landfills and temporary waste activities undertaken as permitted activities are meeting the requirements as set out in the order.

Schedules

Schedules 1 and 2 set out the additional requirements for activities to be permitted or controlled. They include to—

- site, design, operate, and monitor the relevant landfill or temporary waste facility in accordance with the technical guidelines:
- construct, manage, and close the relevant landfill or temporary waste facility in accordance with a site management plan:
- notify specified parties within certain time frames:
- prepare and update a site management plan.

Schedule 3 sets out the requirements for the contents of the site management plan. This is necessary to ensure that activities are managed appropriately, that environmental effects are avoided, mitigated, or managed, and that sites are closed (including site remediation) once they are no longer operating.

The schedules are necessary and desirable to ensure that the landfill or temporary waste facility operators design and construct (for sites constructed on or after 20 September 2023), manage, operate, and close the sites in ways that meet the requirements of the technical guidelines and a site management plan. Meeting those requirements will result in environmental effects being appropriately managed and provide information to the consent authority to support monitoring, compliance, and enforcement activities.

Other preconditions satisfied

The following preconditions for recommending the making of an order have also been satisfied:

- the draft order has been reviewed by the Severe Weather Events Recovery Review Panel:
- the draft order has been provided to the Regulations Review Committee:
- the relevant Minister has had regard to the recommendations and comments provided by those bodies, and the order and this statement of reasons have been amended to address those recommendations and comments:
- the engagement process under section 9 of the SWERLA has been complied with.

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*: 19 September 2023.

This order is administered by the Ministry for the Environment.