

Version  
as at 1 July 2024



## Severe Weather Emergency Recovery (Local Government) Order 2023

(SL 2023/120)

Severe Weather Emergency Recovery (Local Government) Order 2023: revoked, on the close of 30 June 2024, by clause 3(2).

Cindy Kiro, Governor-General

### Order in Council

At Wellington this 6th day of June 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 of Local Government made in accordance with section 8(1) and (2) of that Act.

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#### Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

**This order is administered by the Department of Internal Affairs.**

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## Order

### 1 Title

This order is the Severe Weather Emergency Recovery (Local Government) Order 2023.

### 2 Commencement

- (1) Clauses 5 and 6 are treated as having come into force on 12 February 2023.
- (2) The rest of this order comes into force on 9 June 2023.

### 3 Revocation

- (1) Clauses 5 and 6 are revoked on the close of 1 September 2023.
- (2) The rest of this order is revoked on the close of 30 June 2024.

#### 4 Interpretation

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

**Act**, in clauses 5 to 10, means the Local Government Act 2002

**affected local authority** means Central Hawke’s Bay District Council, Gisborne District Council, Hastings District Council, Thames-Coromandel District Council, Wairoa District Council, and Hawke’s Bay Regional Council.

**Cyclone Gabrielle** means the cyclone that crossed the North Island during the period commencing on 12 February 2023 and ending on 16 February 2023

- (2) 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 in clauses 5 to 8A, 10, and 11.

Clause 4(1) **Cyclone Gabrielle**: inserted, on 26 September 2023, by clause 4(1) of the Severe Weather Emergency Recovery (Local Government) Amendment Order 2023 (SL 2023/260).

Clause 4(2): amended, on 26 September 2023, by clause 4(2) of the Severe Weather Emergency Recovery (Local Government) Amendment Order 2023 (SL 2023/260).

#### *Modifications of and exemptions from provisions of Local Government Act 2002*

#### 5 Modification of period for entering triennial agreement

*[Revoked]*

Clause 5: revoked, on the close of 1 September 2023, by clause 3(1).

#### 6 Modification of time for publishing local governance statements

*[Revoked]*

Clause 6: revoked, on the close of 1 September 2023, by clause 3(1).

#### 7 Modification of requirement for consultation on annual plan

- (1) The requirement under section 95(2) of the Act for an affected local authority to consult in a manner that gives effect to the requirements of section 82 of the Act before adopting an annual plan does not apply in relation to the preparation and adoption of an annual plan for the 2023/2024 financial year.
- (2) Instead, before adopting an annual plan for that financial year, the affected local authority must consult in a manner that gives effect to the requirements of section 82 of the Act to the extent that it is reasonably practicable in the circumstances to do so.

#### 8 Modification of restriction on making certain decisions unless provided for in long-term plan

- (1) Despite section 97(1)(a) and (2) of the Act, an affected local authority may make a decision to alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the authority, including a decision to commence or cease any such activity, without having provided

for that decision in its long-term plan if the authority's decision relates to responding to, or recovering from, Cyclone Gabrielle.

- (1A) To avoid doubt, **responding to, or recovering from, Cyclone Gabrielle** includes buying properties affected by the cyclone.
- (2) This clause applies for the duration of the annual plan adopted by the authority for the 2023/2024 financial year.

Clause 8(1): amended, on 26 September 2023, by clause 5(1)(a) of the Severe Weather Emergency Recovery (Local Government) Amendment Order 2023 (SL 2023/260).

Clause 8(1): amended, on 26 September 2023, by clause 5(1)(b) of the Severe Weather Emergency Recovery (Local Government) Amendment Order 2023 (SL 2023/260).

Clause 8(1): amended, on 26 September 2023, by clause 5(1)(c) of the Severe Weather Emergency Recovery (Local Government) Amendment Order 2023 (SL 2023/260).

Clause 8(1A): inserted, on 26 September 2023, by clause 5(2) of the Severe Weather Emergency Recovery (Local Government) Amendment Order 2023 (SL 2023/260).

Clause 8(2): amended, on 26 September 2023, by clause 5(3) of the Severe Weather Emergency Recovery (Local Government) Amendment Order 2023 (SL 2023/260).

#### **8A Auckland Council- and Napier City Council-specific modification of restriction on making certain decisions unless provided for in long-term plan**

- (1) Despite section 97(1)(a) and (2) of the Act, Auckland Council or Napier City Council may make a decision to do any of the following things without having provided for the decision in its long-term plan:
- (a) buy properties affected by 1 or more severe weather events (a **decision to buy affected properties**):
  - (b) alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the council (a **decision to alter service level**), including a decision to commence or cease any such activity, but only if—
    - (i) the council has made a decision to buy affected properties; and
    - (ii) the decision to alter service level relates to the decision to buy affected properties.

- (2) This clause applies for the duration of the annual plans adopted by each council for the 2023/2024 financial year.

Clause 8A: inserted, on 26 September 2023, by clause 6 of the Severe Weather Emergency Recovery (Local Government) Amendment Order 2023 (SL 2023/260).

#### **9 Exemption from provision of Act concerning financial management**

- (1) An affected local authority is exempt from section 101(3) of the Act in respect of the funding needs of the local authority in relation to actions taken to respond to, or recover from, Cyclone Gabrielle.
- (2) The exemption applies for the duration of the annual plan adopted by the authority for the 2023/2024 financial year.

Clause 9(1): amended, on 26 September 2023, by clause 7 of the Severe Weather Emergency Recovery (Local Government) Amendment Order 2023 (SL 2023/260).

**10 Modification of requirements for consultation on rates remission and postponement policies**

- (1) The requirements under sections 108(4A), 109(2A)(a), and 110(2A)(a) of the Act for an affected local authority to consult using a consultation process that gives effect to the requirements of section 82 of the Act do not apply.
- (2) Instead, the affected local authority must in each case consult using a consultation process that, to the extent reasonably practicable in the circumstances, gives effect to the requirements of section 82 of the Act.

*Modification of Local Government (Rating) Act 2002 provision: 2023/2024 annual plan*

**11 Modification of requirement for rates to be set in accordance with provisions of long-term plan**

- (1) Despite section 23(2)(b) of the Local Government (Rating) Act 2002, an affected local authority may set rates that are not in accordance with the relevant provisions of the authority's long-term plan in order to respond to, or recover from, Cyclone Gabrielle.
- (2) Subclause (1) applies for the duration of the annual plan adopted by the local authority for the 2023/2024 financial year.
- (3) To avoid doubt, subclause (1) does not affect the requirement under section 23(2)(b) of that Act for the rates set by the local authority to be set in accordance with the funding impact statement for the relevant financial year.

Clause 11(1): amended, on 26 September 2023, by clause 8 of the Severe Weather Emergency Recovery (Local Government) Amendment Order 2023 (SL 2023/260).

*Exemptions from provisions of Local Government (Financial Reporting and Prudence) Regulations 2014: 2023/2024 annual plan*

**12 Exemptions from obligations to disclose planned performance in relation to benchmarks**

- (1) An affected local authority is exempt from complying with each obligation under the Local Government (Financial Reporting and Prudence) Regulations 2014 specified in subclause (2)(a) to (g)—
  - (a) to the extent that the obligation requires the local authority to disclose its planned performance in relation to the benchmark specified in each case; and
  - (b) for the period only of the local authority's 2023/2024 annual plan.
- (2) The obligations are—
  - (a) the obligation under regulation 17(2) relating to rates affordability:

- (b) the obligation under regulation 18(2) relating to debt affordability:
- (c) the obligation under regulation 19(2) relating to the balanced budget:
- (d) the obligation under regulation 20(2) relating essential services:
- (e) the obligation under regulation 21(3) relating to debt servicing:
- (f) the obligation under regulation 22(2) relating to debt control:
- (g) the obligation under regulation 23(2) relating to operations control.

Rachel Hayward,  
Clerk of the Executive Council.

### Statement of reasons

**Note: The following statement of reasons should be read in conjunction with the statement(s) of reasons appended to the:**

- Severe Weather Emergency Recovery (Local Government) Amendment Order 2023

*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 **SWERL Act**).*

The relevant Minister (the Minister of Local Government) is satisfied that this order is necessary or desirable for 1 or more purposes of the SWERL Act and is no broader than is reasonably necessary to address the matters that gave rise to the order.

The SWERL Act creates the ability to issue Orders in Council to assist communities affected by severe weather events to respond to, and recover from, the impacts of the events. The purpose is to provide for the planning, rebuilding, and recovery of affected communities and to aid economic recovery. It enables other legislation to be relaxed, or to operate more flexibly, to allow for this.

*Clauses 5 and 6* deal with 2 processes: the conclusion of a triennial regional agreement, and the publication of a local governance statement, where the affected local authorities could not comply with the statutory time limits because they were attending to cyclone response matters following Cyclone Gabrielle, which crossed the North Island between 12 February and 16 February 2023 (a severe weather event within the meaning of section 4(1) of the SWERL Act) (the **severe weather event**). The effect of the order is to make a small extension of the time period the councils had to complete this process. These clauses deal with a situation where provisions of the Local Government Act 2002 could not reasonably be complied with owing to the circumstances resulting from the severe weather event.

The modifications and exemption in *clauses 7 to 9* relate to changes that apply for the duration of the 2023/2024 annual plans adopted by the local authorities. They recognise that the requirements to consult on the adoption of the 2023/2024 annual

plans set out in section 82 of the Local Government Act 2002 may not be able to be fully met in the circumstances of the affected local authorities. They require local authorities to comply with section 82, but only to the extent it is reasonably practicable to do so in the circumstances. Each affected local authority will need to make its own judgement about what is reasonably practicable according to the circumstances prevailing in its area.

*Clause 8* recognises that, as part of cyclone recovery, councils may have to make decisions about levels of service that they were unable to anticipate in their 2021 long-term plan. The effect of *clause 8* is that councils will be able to make those decisions without having to formally amend the long-term plan they adopted in 2021.

*Clause 9* recognises that local authorities are faced with high levels of unanticipated and unbudgeted expenditure due to the severe weather event. The effect of the clause is to allow affected local authorities to apply revenue received to their immediate priorities without being constrained by existing statutory consideration of how costs should be distributed between different classes of ratepayer within their communities.

*Clauses 7 to 9* facilitate the short-term recovery in each of the communities affected. They do this by relaxing the operation of provisions of the Local Government Act 2002 to avoid diversion of resources away from the effort to respond to the damage caused by the severe weather event.

*Clause 10* permits local authorities to make changes to rates remission and postponement policies without fully complying with the consultation requirements of section 82 of the Local Government Act 2002. This is to enable prompt amendment of those policies to allow councils to offer rates relief to individual ratepayers affected by damage caused by the severe weather event, should councils choose to do so. This is consistent with the principal purpose of the SWERL Act to provide for the recovery of affected persons, by facilitating the restoration and improvement of economic and social well-being.

*Clause 11* allows local authorities to set rates that were not anticipated in their long-term plan, for example, a recovery rate. Such rates would still need to be provided for in their annual plan for 2023/2024 and subject to the related consultation on that plan. This is consistent with the primary purpose of the SWERL Act and is achieved by modifying the Local Government (Rating) Act 2002 to facilitate recovery from the severe weather event.

*Clause 12* exempts a local authority from a disclosure requirement in their annual plans related to financial prudence benchmarks. The benchmarks are disclosure requirements only—they do not prohibit or limit financial management practices by local authorities. In the circumstances these local authorities face, normal considerations of financial prudence are necessarily suspended. This clause allows the Local Government Act 2002 to operate more flexibly to take account of the actions local authorities will necessarily take to respond to the severe weather event.

The SWERL Act requires that orders are not broader than reasonably necessary. This order has been confined to 6 of the most severely affected local authorities. It has

also been limited in time. *Clauses 5 and 6* are revoked on 1 September 2023. The remaining clauses are revoked on 30 June 2024, so apply for 1 financial year only.

The Minister of Local Government is further satisfied that the order does not breach section 11 of the Act, nor does it limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990.

The engagement process described in section 9 of the Act has been complied with.

A draft of this order was reviewed by the Severe Weather Events Recovery Review Panel. A copy was also provided to the Regulations Review Committee. The Minister of Local Government had regard to the recommendations and comments provided by them.

**Note: The preceding statement of reasons should be read in conjunction with the statement(s) of reasons appended to the:**

- Severe Weather Emergency Recovery (Local Government) Amendment Order 2023

Issued under the authority of the Legislation Act 2019.  
Date of notification in *Gazette*: 8 June 2023.

## Notes

### **1** *General*

This is a consolidation of the Severe Weather Emergency Recovery (Local Government) Order 2023 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

### **2** *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

### **3** *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

### **4** *Amendments incorporated in this consolidation*

Severe Weather Emergency Recovery (Local Government) Amendment Order 2023 (SL 2023/260)

Severe Weather Emergency Recovery (Local Government) Order 2023 (SL 2023/120): clause 3