



Severe Weather Emergency Recovery (Resource Management—Extension of Water Permits) 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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Order

1 Title

This order is the Severe Weather Emergency Recovery (Resource Management—Extension of Water Permits) Order 2023.

2 Commencement

This order is treated as having come into force on 12 February 2023.

3 Modification of section 124 of Resource Management Act 1991 in relation to certain water permits

(1) Section 124 of the Resource Management Act 1991 applies as if the following were inserted after subsection (2):

(2A) Subsection (3) also applies when—

- (a) a resource consent that is a water permit to take, or to take and use, water is due to expire in the period that—
 - (i) begins on 12 May 2023; and
 - (ii) ends on 31 May 2023; and
- (b) the consent is in respect of a site in any of the Tūtaekurī, Ahuriri, Ngaruroro, or Karamū catchments (as delineated in “TANK Planning Maps” published by Hawke’s Bay Regional Council in September 2022); and
- (c) the holder of the consent applies for a new consent for the same activity; and
- (d) the application is made to Hawke’s Bay Regional Council; and
- (e) the application is made in the period that—
 - (i) begins from the day that is 3 months before the expiry of the existing consent; and
 - (ii) ends on the expiry of the existing consent.

(2) The modification made by this clause does not affect the text of the Resource Management Act 1991, but requires it to be read as if amended in the manner indicated in this clause.

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 (the **SWERLA**) and its effect is temporary. It is treated as having come into force on 12 February 2023 and is revoked on the close of 31 March 2028 under section 17 of the SWERLA.

This order modifies section 124 of the Resource Management Act 1991 (the **RMA**), which enables a resource consent holder to continue to operate under a resource consent after it is due to expire, but only if an application for a replacement consent for

the same activity is made at least 6 months before the existing consent is due to expire (or between 3 to 6 months before, with council approval).

This modification extends the application of section 124(3) of the RMA to water permits to take, or take and use, water that were due to expire in the period that began on 12 May 2023 and ended on 31 May 2023 and were given in respect of a site in any of the Tūtaekurī, Ahuriri, Ngaruroro, or Karamū catchments in the Hawke's Bay region. The modification provides that the holder of such a water permit can continue to operate under the permit after its expiry until a new permit for the same activity is granted or declined and all appeals are determined, provided that the new permit was applied for within 3 months before the expiry.

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 **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 modification made by the order will assist with the planning, rebuilding, and recovery of affected communities and persons, including—

- the rebuilding of land, infrastructure, and other property of affected communities or of any affected persons; and
- facilitating co-ordinated efforts and processes for short-term, medium-term, and long-term recovery; and
- facilitating the restoration and improvement of the economic, social, and cultural well-being, and enhancing the resilience, of affected communities or of any affected persons.

Allowing existing water permit holders who (due to the severe weather events) missed the opportunity to lodge replacement resource consent applications within the

time frames set out in section 124 of the Resource Management Act 1991 (the **RMA**) (at least 3 months prior to the expiry of their existing consents) to continue to operate under section 124 of the RMA enables a range of industry, farming, and supporting activities to continue to lawfully operate while the replacement applications are being considered by the Hawke's Bay Regional Council and any subsequent appeals are resolved.

Order not broader than reasonably necessary

The Minister is satisfied that the order is not broader than is reasonably necessary for the following reasons.

The order is limited to resource consents that expired between 12 and 31 May 2023 and for which new applications for the same activity were lodged with the consent authority in the 3 months before the consent expired. It is further limited to water permits to take, or take and use, water issued by the Hawke's Bay Regional Council. The order is geographically limited to sites in any of the Tūtaekurī, Ahuriri, Ngaruroro, or Karamū catchments.

The order will remain in effect until the SWERLA expires, due to the potential for replacement applications to be subject to lengthy appeal processes. Once a replacement water permit application has been decided, and there are no outstanding appeals, the order will no longer apply to that expired consent. As such, the impact of the order will reduce as replacement water permit applications are decided.

The modification chosen departs least from the status quo as it applies the same approach to the expired consents as would apply under section 124 of the RMA, with the exception that if the new application is not dealt with by the time the order is revoked, the expired consent can no longer be relied upon.

Enabling existing consent holders to continue to exercise consents while new applications are being decided enables communities to continue to provide for their well-being, health, and safety as they relate to water use in the relevant catchments. Consent holders are required to continue to comply with all conditions imposed on their existing, now expired, consents to avoid, remedy, or mitigate adverse effects of activities on the environment.

The order is temporary in nature and focused on ensuring those water permit holders who missed the window to lodge replacement resource consent applications because of the severe weather events can continue to take and use water subject to replacement applications having been lodged and complying with existing consent conditions.

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 Minister has had regard to the recommendations and comments provided by those bodies:
- the engagement process under section 9 of the SWERLA has been complied with:
- the Minister has considered—
 - the effects on the environment that could occur as a result of the order;
and
 - whether any adverse effects can be avoided, remedied, or mitigated.

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.