



Severe Weather Emergency Recovery (Resource Management—Streamlined Planning Process) 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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2023**

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Order

1 Title

This order is the Severe Weather Emergency Recovery (Resource Management—Streamlined Planning Process) Order 2023.

Part 1

Preliminary provisions

2 Commencement

This order comes into force on 20 September 2023.

3 Revocation

This order is revoked on the close of 20 September 2026.

4 Interpretation

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

Act means the Resource Management Act 1991

local authority has the meaning set out in clause 5(3)

papakāinga means any papakāinga on any land regardless of the land’s status under Te Ture Whenua Maori Act 1993

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

responsible Minister means the Minister for the Environment

Schedule 1 means Schedule 1 of the Act

SWER streamlined planning process means the streamlined planning process provided for by subpart 5 of Part 5 of the Act and Part 5 of Schedule 1 as modified by this order.

- (2) The modification of legislation by this order does not affect the text of the legislation, but requires it to be read to the extent required by clause 5 as if it had been amended in the manner indicated in this order.

5 Application of order

- (1) This order applies to a local authority in respect of a planning process to enable development of housing or papakāinga in its region or district that is necessary or desirable to provide permanent housing for people displaced by a severe weather event.
- (2) However, this order applies in the situation set out in subclause (1) only if a local authority considers it is appropriate, in the circumstances, to use the SWER streamlined planning process.
- (3) In this order, **local authority** means any of the following:
- (a) Central Hawke’s Bay District Council:
 - (b) Far North District Council:
 - (c) Gisborne District Council:
 - (d) Hastings District Council:
 - (e) Hawke’s Bay Regional Council:
 - (f) Kaipara District Council:
 - (g) Napier City Council:
 - (h) Northland Regional Council:
 - (i) Wairoa District Council:
 - (j) Whangarei District Council.

Part 2 Modifications to Part 4 of Act

6 Modification of section 32 (Requirements for preparing and publishing evaluation reports)

- (1) This clause modifies section 32 of the Act.
- (2) Section 32(1)(b)(ii), (2), and (3) do not apply.
- (3) Section 32(1) applies as if paragraph (c) were replaced by the following:
 - (c) contain a level of detail that is reasonable in the circumstances having regard to—
 - (i) the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal; and
 - (ii) the urgent need to provide permanent housing for people displaced by a severe weather event.
- (4) In addition to the matters in section 32(1), the evaluation report must set out how the criteria set out in section 80C(2)(a) to (d) of the Act and, if applicable, clause 8(2)(b) of this order are satisfied.
- (5) Section 32(6) applies as if the definition of **objectives** were omitted and the following definitions were inserted in their appropriate alphabetical order:

objectives means the purpose of enabling the development of housing or papakāinga in the relevant local authority’s region or district that is necessary or desirable to provide permanent housing for people displaced by a severe weather event

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

7 Modification of section 32AA (Requirements for undertaking and publishing further evaluations)

- (1) This clause modifies section 32AA of the Act.
- (2) Section 32AA(1) applies as if paragraphs (b) and (c) were replaced by the following:
 - (b) must be undertaken in accordance with section 32(1)(a), (b)(i) and (iii), and (4); and
 - (c) must, despite paragraph (b), be undertaken at a level of detail that is reasonable in the circumstances having regard to—
 - (i) the scale and significance of the changes; and
 - (ii) the urgent need to provide permanent housing for people displaced by a severe weather event; and

- (3) Section 32AA applies as if the following subsection were inserted after subsection (3):
- (4) In this section, **severe weather event** has the same meaning as in section 4(1) of the Severe Weather Emergency Recovery Legislation Act 2023.

Part 3 Modifications to Part 5 of Act

8 Modification of section 80A (Freshwater planning process)

- (1) This clause modifies section 80A of the Act.
- (2) Despite anything to the contrary in section 80A, a regional council may prepare, in accordance with the SWER streamlined planning process, a change or variation to a proposed regional plan or regional policy statement referred to in section 80A(2) if—
- (a) the regional council is a local authority specified in clause 5(3) of this order; and
- (b) the regional council is satisfied that, in addition to meeting the criteria under section 80C(2), the change or variation is necessary or desirable for the avoidance or mitigation of natural hazards (*see* section 30(1)(c)(iv) of the Act).

9 Modification of section 80B (Purpose, scope, application of Schedule 1, and definitions)

- (1) This clause modifies section 80B of the Act.
- (2) Section 80B applies as if subsection (1) were replaced by the following:
- (1) This subpart and Part 5 of Schedule 1 provide a process for the preparation of a planning instrument in order to achieve an expeditious planning process that enables the development of housing or papakāinga that is necessary or desirable to provide permanent housing for people displaced by a severe weather event.
- (3) Despite section 80B(2)(a) and (b), clauses 4, 6A, 9, and 13 of Schedule 1 do not apply to the SWER streamlined planning process.
- (4) In addition to the clauses listed in section 80B(2)(a) and (b), clause 8AA of Schedule 1 applies to the SWER streamlined planning process.
- (5) Despite section 80B(2)(b), clauses 25(2)(a)(i) and 26(1)(b) of Schedule 1 apply to the SWER streamlined planning process.
- (6) In section 80B(2)(c)(iii), “a direction given under clause 78 of Schedule 1” is to be read as “the SWER streamlined planning process”.
- (7) Section 80B(3) applies as if the definition of **responsible Minister** were omitted and the following definitions were inserted in their appropriate alphabetical order:

responsible Minister means the Minister for the Environment

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

SWER streamlined planning process has the same meaning as in clause 4(1) of the Severe Weather Emergency Recovery (Resource Management—Streamlined Planning Process) Order 2023

10 Modification of section 80C (Application to responsible Minister for direction)

- (1) This clause modifies section 80C of the Act.
- (2) The heading to section 80C is to be read as “**Notice to responsible Minister**”.
- (3) Section 80C applies as if subsections (1) and (2) were replaced by the following:
 - (1) If a local authority determines that, in the circumstances, it would be appropriate to use the SWER streamlined planning process to prepare a planning instrument, it may give notice to the responsible Minister in accordance with clause 15 of the Severe Weather Emergency Recovery (Resource Management—Streamlined Planning Process) Order 2023 that it intends to use the SWER streamlined planning process.
 - (2) However, a local authority may give notice of an intention to use the SWER streamlined planning process only if the local authority is satisfied that—
 - (a) the proposed planning instrument is only for the purpose of enabling the development of housing or papakāinga in the local authority’s region or district that is necessary or desirable to provide permanent housing for people displaced by a severe weather event; and
 - (b) the proposed planning instrument will support the recovery of affected communities and persons from the impact of a severe weather event; and
 - (c) the scale of development authorised by the proposed planning instrument will support the aspirations of the local authority or a relevant iwi authority (or both) for recovery in the region, district, or rohe; and
 - (d) if the proposed planning instrument is for the purpose of enabling the development of papakāinga, the relevant iwi authorities have agreed that papakāinga may be established in the proposed location.
 - (4) In section 80C(3), “applies for a direction under this section” is to be read as “gives notice that it intends to use the SWER streamlined planning process”.
 - (5) Section 80C applies as if subsection (4) were replaced by the following:
 - (4) The notice must be given to the responsible Minister no later than the close of 20 September 2024 and before the local authority gives notice—
 - (a) under clause 5 of Schedule 1, in relation to a proposed planning instrument; or

- (b) under clauses 25(2)(a)(i) and 26(1)(b) of Schedule 1, in relation to a request for a private plan change.

Part 4 Modifications to Schedule 1 of Act

11 Modification of clause 3C of Schedule 1

- (1) This clause modifies clause 3C of Schedule 1.
- (2) Clause 3C applies as if it were replaced with the following:

3C Previous consultation

A local authority is not required to comply with clause 3 to the extent that any matter in a proposed planning instrument has been the subject of consultation with the same person, group of persons, or their representative or agent under any other process within the 18 months preceding public notification of the proposed planning instrument that the matter relates to, so long as that consultation related to the housing and papakāinga proposed to be enabled by the planning instrument.

12 Modification of clause 25 of Schedule 1

- (1) This clause modifies clause 25 of Schedule 1.
- (2) Clause 25(2)(a)(i) applies as if “or 5A” were deleted.
- (3) Clause 25(2AA) does not apply.

13 Modification of clause 26 of Schedule 1

- (1) This clause modifies clause 26 of Schedule 1.
- (2) Clause 26(2) does not apply.

14 Modification of clauses 75 to 78, 80 to 82, and 89 of Schedule 1

- (1) This clause modifies clauses 75 to 78, 80 to 82, and 89 of Schedule 1.
- (2) Clauses 75 to 78, 80 to 82, and 89 do not apply.

15 Contents of notice to use SWER streamlined planning process

Instead of the requirements in clause 75 of Schedule 1, a notice to the responsible Minister that a local authority intends to use the SWER streamlined planning process must—

- (a) be in writing; and
- (b) set out a brief explanation of how the criteria set out in section 80C(2) of the Act and, if applicable, clause 8(2)(b) of this order are satisfied; and
- (c) specify the area the proposed planning instrument applies to; and

- (d) specify when the proposed planning instrument is expected to be publicly notified under clause 5 of Schedule 1.

16 SWER streamlined planning process

- (1) Instead of the requirements in clauses 78 and 82 of Schedule 1, a local authority that has given notice to the responsible Minister that it intends to use the SWER streamlined planning process must, at a minimum,—
- (a) in addition to the requirements in clauses 1A to 3C of Schedule 1, consult on the proposed planning instrument—
- (i) with any affected post-settlement governance entities (if not already undertaken); and
- (ii) with any group that, for the purposes of the Act, represents any affected hapū (if not already undertaken); and
- (b) in accordance with clause 5 of Schedule 1,—
- (i) prepare an evaluation report on the proposed planning instrument under section 32 of the Act; and
- (ii) in addition to the matters in section 32(4A) of the Act, summarise the following in the evaluation report:
- (A) all advice concerning the proposal that is received, under the relevant provisions of this order, from the entities or groups referred to in paragraph (a)(i) or (ii);
- (B) the response to the advice, including any provisions of the proposal that are intended to give effect to the advice; and
- (iii) publicly notify the proposed planning instrument; and
- (c) comply with all other requirements in clause 5 of Schedule 1 (other than clause 5(1)(b)(ii)); and
- (d) in addition to the requirement in clause 5(4) of Schedule 1, provide a copy of the proposed planning instrument without charge to each entity or group referred to in paragraph (a)(i) or (ii) (if any); and
- (e) provide an opportunity for written submissions in accordance with clause 6 of Schedule 1; and
- (f) make copies of the written submissions that the local authority has received publicly available on an Internet site maintained by, or on behalf of, the local authority; and
- (g) appoint, in accordance with subclause (2), an independent panel (the **panel**); and
- (h) take reasonable steps to ensure that the panel follows the process set out in subclauses (3) and (4); and

- (i) submit the information and documentation specified in clause 83(1) of Schedule 1 to the responsible Minister no later than the close of 20 May 2026.
- (2) The local authority must take reasonable steps to ensure that the panel—
 - (a) is made up of 1 or more commissioners; and
 - (b) includes at least 1 commissioner with knowledge of tikanga Māori; and
 - (c) is commensurate to the size and nature of the proposed planning instrument.
- (3) For the purposes of subclause (1)(h), the process is as follows:
 - (a) the panel must hold a hearing under clause 8B of Schedule 1 unless, under clause 8C of Schedule 1, a hearing is not needed (where clauses 8B and 8C apply with all necessary modifications as if the panel were the local authority); and
 - (b) the panel must comply with clause 10(1) to (3) of Schedule 1 (which applies with all necessary modifications as if the panel were the local authority); and
 - (c) the panel must prepare a report showing—
 - (i) how it has considered submissions; and
 - (ii) any modifications it has made to the proposed planning instrument in light of the submissions; and
 - (d) in preparing the report, the panel must have particular regard to the further evaluation undertaken in accordance with section 32AA of the Act (if any); and
 - (e) the panel must give the report to the local authority as soon as practicable after it is finalised; and
 - (f) the panel must prepare the summary document specified in clause 83(1)(f) of Schedule 1 and give the document to the local authority as soon as practicable after it is finalised.
- (4) The panel must, to the extent reasonably practicable, perform its functions under subclause (3) in the same manner, subject to the same restrictions, and with the same effect as if the panel were the local authority for the purposes of the Act.
- (5) For the purposes of subclause (1)(i), the report that would otherwise be submitted under clause 83(1)(c) of Schedule 1 must be the report given to the local authority under subclause (3)(e) (instead of a report prepared by the local authority).
- (6) For the purposes of subclause (1)(i), the document that would otherwise be submitted under clause 83(1)(f) of Schedule 1 must be the document given to the local authority under subclause (3)(f) (instead of a document prepared by the local authority).

17 Modification of clause 83 of Schedule 1

- (1) This clause modifies clause 83 of Schedule 1.
- (2) In clause 83(1), “A local authority that is subject to a direction under clause 78” is to be read as “A local authority that has given notice to the responsible Minister that it intends to use the SWER streamlined planning process”.
- (3) In clause 83(1), “the time required by the direction” is to be read as “the time required by the SWER streamlined planning process”.
- (4) Clause 83(1)(e) and (g) does not apply.
- (5) In addition to the information and documentation specified in clause 83(1) that the local authority must submit to the responsible Minister, the local authority must, at the same time, submit a summary document showing how the criteria set out in section 80C(2) of the Act and, if applicable, clause 8(2)(b) of this order are satisfied, including confirming that the local authority is satisfied that relevant iwi authorities have agreed as referred to in section 80C(2)(d).

18 Modification of clause 84 of Schedule 1

- (1) This clause modifies clause 84 of Schedule 1.
- (2) In clause 84(2)(a), “the direction” is to be read as “the SWER streamlined planning process”.
- (3) Clause 84(2)(b)(i) does not apply.
- (4) In clause 84(2), “local authority” includes the independent panel referred to in clause 16 of this order.
- (5) In clause 84(3)(a), “the streamlined planning process” is to be read as “the SWER streamlined planning process”.

19 Modification of clause 86 of Schedule 1

- (1) This clause modifies clause 86 of Schedule 1.
- (2) Clause 86(2) does not apply.

20 Modification of clause 88 of Schedule 1

- (1) This clause modifies clause 88 of Schedule 1.
- (2) In clause 88(1), “a local authority that is subject to a direction under clause 78” is to be read as “a local authority that has given notice to the responsible Minister that it intends to use the SWER streamlined planning process”.
- (3) Clause 88(1) applies as if “set out in the direction” were deleted.
- (4) Clause 88(4) does not apply.

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 **Act**) and its effect is temporary. It comes into force on 20 September 2023 and is revoked on the close of 20 September 2026.

This order applies only to certain local authorities in respect of a planning process to enable development of housing or papakāinga in their region or district that is necessary or desirable to provide permanent housing for people displaced by a severe weather event (as defined in section 4(1) of the Act).

The local authorities are the Central Hawke’s Bay District Council, the Far North District Council, the Gisborne District Council, the Hastings District Council, the Hawke’s Bay Regional Council, the Kaipara District Council, the Napier City Council, the Northland Regional Council, the Wairoa District Council, and the Whangarei District Council.

This order modifies the streamlined planning process provided for in subpart 5 of Part 5 and Part 5 of Schedule 1 of the Resource Management Act 1991 (the **RMA**). The modified process is called the **SWER streamlined planning process**. The main modifications are as follows:

- a local authority does not need to apply to the responsible Minister for a direction to use the process. Instead, the local authority must satisfy itself of certain criteria before giving to the responsible Minister a notice of intention to use the process (*see clause 10*):
- the Minister’s direction would normally set out minimum process requirements. Instead, the minimum process requirements are set out in the order (*see clause 16*). In addition to consultation with iwi authorities, the order requires the local authority to consult with affected post-settlement governance entities and groups that represent affected hapū:
- instead of the local authority holding a hearing into submissions on its proposed planning instrument, the local authority must appoint an independent panel to hold the hearing, prepare a report on submissions, and make modifications to the proposed planning instrument in light of submissions (*see clause 16*). Clause 91 of Schedule 1 of the RMA, which limits the right to appeal against decisions or actions of persons under Part 5 of Schedule 1, applies to the independent panel in addition to the local authority and responsible Minister:
- an evaluation report or further evaluation under section 32 or 32AA of the RMA is not required to assess the efficiency and effectiveness of the provisions in the proposal in achieving the purpose of the proposal (*see clauses 6 and 7*). Instead, the evaluation report must set out how the relevant criteria for using the SWER streamlined planning process are satisfied:

- this order permits a change or variation involving freshwater to be prepared using the SWER streamlined planning process (*see clause 8*).

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 Act.

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

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

Order is necessary or desirable for 1 or more purposes of Act

In relation to section 8(1)(a)(i) of the Act, the order will assist communities and local authorities to provide for the planning, rebuilding, and recovery of affected communities and persons, including—

- the development, building, or rebuilding of land, infrastructure, or other property or access to resources or services in areas not affected by the severe weather events; and
- facilitating co-ordinated efforts and processes for short-term, medium-term, and long-term recovery; and
- supporting the operation of other legislation, or enabling it to be relaxed or operate more flexibly, to take account of actions taken to respond to, or recover from, the severe weather events.

The severe weather events have damaged housing, marae, and papakāinga. People will need to rebuild them or move to areas at less risk from natural hazards, including future severe weather events. The planning rules in local plans made under the RMA manage where new housing can be developed. Some changes are required to the local plans to enable new permanent housing, marae, and papakāinga to be established (such as rezoning additional areas so they can be developed for housing and papakāinga). An efficient plan change process is needed to enable the rezoning of those areas so new housing or papakāinga can be quickly established to urgently provide housing for people who have been permanently displaced by the severe weather events.

Clause 8 provides that if any changes are required to a regional plan or regional policy statement to enable natural hazard mitigation measures to be undertaken before housing or papakāinga is developed, the change may use the SWER streamlined planning process. This ensures that, despite the change addressing the management of risk from a body of fresh water, the freshwater planning process is not required to be followed. In some locations it is important that mitigation of the ongoing flood risk occurs before the new housing and papakāinga are established. A freshwater planning process will take much longer than a plan change through the SWER streamlined planning process and it is desirable that these are able to occur concurrently.

Clause 10 modifies section 80C of the RMA to allow a local authority to notify the relevant Minister that it intends to use the SWER streamlined planning process, rather than having to apply to that Minister to use the process. This saves time for the local authorities, enabling new housing more quickly to support recovery from the severe weather events. It also gives certainty to local authorities that they will be able to use the SWER streamlined planning process if they are satisfied they have met the criteria outlined in that clause. They include the following criteria:

- the proposed plan change is only for the purpose of enabling the development of housing or papakāinga in the local authority's region or district that is necessary or desirable to provide permanent housing for people displaced by a severe weather event; and
- the proposed plan change will support the recovery of affected communities and persons from the impact of a severe weather event.

Clause 16 outlines the process local authorities must follow as part of the SWER streamlined planning process. This replaces the direction the relevant Minister usually makes on approval of the use of the streamlined planning process. The process outlined in that clause has been streamlined to ensure that the process is as quick as possible, while also retaining the appropriate checks and balances.

Order not broader than reasonably necessary

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

Clause 3 revokes the order 3 years after its commencement. This ensures that plan changes are focused on areas for development that can be immediately identified and acted upon early to support the long-term recovery from the severe weather events.

Clause 5 ensures that the order applies only to those local authorities that were most affected. Those areas also had the worst damage to their housing stock, compared with damage to roading and other infrastructure.

Clause 8 ensures that it is possible for changes necessary to enable the mitigation of flood risk to be undertaken in a timely manner before any new housing is established. The criteria in the order limit the application of that clause to plan changes that are necessary or desirable for the avoidance or mitigation of natural hazards. This will enable the natural hazard mitigation works required to support the establishment of new housing and papakāinga.

Clause 10 outlines the criteria local authorities must be satisfied they meet to give notice to the relevant Minister that they intend to use the SWER streamlined planning process. They include the following criteria, which require that the local authority is satisfied that—

- the proposed plan change is only for the purpose of enabling the development of housing or papakāinga in the local authority's region or district that is necessary or desirable to provide permanent housing for people displaced by a severe weather event; and

- the proposed plan change will support the recovery of affected communities and persons from the impact of a severe weather event.

If facilities or amenities are necessary to enable housing or papakāinga (for example, infrastructure, open space, marae, etc) then they may be included within the proposed plan change. Any plan change using the SWER streamlined planning process will still need to comply with national direction requirements.

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 Act has been complied with:
- the relevant 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.

The order does not have any direct effect on the environment. The order is providing for a different process rather than a different outcome. Any plan change process in accordance with the order will still need to consider and manage all relevant effects on the environment and comply with national direction requirements.

The ability to use this process rather than the freshwater planning process is narrowly constrained to only include the ability to enable natural hazard mitigation measures that relate to the development of housing and papakāinga. Those plan changes will still need to fulfil any relevant requirements of the National Policy Statement for Freshwater Management.

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.