

Version
as at 1 July 2024



Severe Weather Emergency Recovery (Local Government) Amendment Order 2023

(SL 2023/260)

Severe Weather Emergency Recovery (Local Government) Amendment Order 2023: revoked, on the close of 30 June 2024, pursuant to clause 3(2) of the Severe Weather Emergency Recovery (Local Government) Order 2023 (SL 2023/120).

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 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) Amendment Order 2023.

2 Commencement

This order comes into force on 26 September 2023.

3 Principal order

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

4 Clause 4 amended (Interpretation)

(1) In clause 4(1), insert in its appropriate alphabetical order:

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) In clause 4(2), replace “8” with “8A”.

5 Clause 8 amended (Modification of restriction on making certain decisions unless provided for in long-term plan)

(1) In clause 8(1),—

(a) replace “(2)(a)” with “(2)”; and

(b) replace “a previous” with “its”; and

(c) replace “Cyclone Gabrielle, which crossed the North Island during the period commencing on 12 February 2023 and ending on 16 February 2023” with “Cyclone Gabrielle”.

- (2) After clause 8(1), insert:
- (1A) To avoid doubt, **responding to, or recovering from, Cyclone Gabrielle** includes buying properties affected by the cyclone.
- (3) In clause 8(2), replace “Subclause (1)” with “This clause”.

6 New clause 8A inserted (Auckland Council- and Napier City Council-specific modification of restriction on making certain decisions unless provided for in long-term plan)

After clause 8, insert:

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.

7 Clause 9 amended (Exemption from provision of Act concerning financial management)

In clause 9(1), replace “Cyclone Gabrielle, which crossed the North Island during the period commencing on 12 February 2023 and ending on 16 February 2023” with “Cyclone Gabrielle”.

8 Clause 11 amended (Modification of requirement for rates to be set in accordance with provisions of long-term plan)

In clause 11(1), replace “Cyclone Gabrielle, which crossed the North Island during the period commencing on 12 February 2023 and ending on 16 February 2023” with “Cyclone Gabrielle”.

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 amends the Severe Weather Emergency Recovery (Local Government) Order 2023 (the **principal order**). It comes into force on 26 September 2023.

This order amends clause 8 of the principal order to clarify—

- that an affected local authority may make a decision to significantly alter the intended level of service provision for any significant activity undertaken by or on behalf of the authority without including the proposal to provide for the decision in a consultation document in accordance with section 93E of the Local Government Act 2002 (the **Act**), if the decision relates to responding to, or recovering from, Cyclone Gabrielle; and
- that buying properties affected by Cyclone Gabrielle is part of the response to, or recovery from, the cyclone.

This order also inserts *new clause 8A* to enable Auckland Council and Napier City Council to make the following decisions without having to provide for the decisions in their current long-term plan:

- a decision to buy properties affected by 1 or more severe weather events (**affected properties**):
- after making a decision to buy affected properties, a decision to significantly alter the intended level of service provision for any significant activity undertaken by or on behalf of the council, if that decision relates to the decision to buy affected properties.

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 **SWERLA**).*

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

This order amends the principal order to enable specified councils to make a decision to purchase properties that have been severely affected by the severe weather events defined in the SWERLA (the **severe weather events**), without having to amend their long-term plan as required by section 97 of the Act.

Clause 8 of the principal order provides an exemption from section 97(1)(a) and (2)(a) of the Act for response- and recovery-related decisions that specified councils could not anticipate in their long-term plan for 2021 to 2031. Clause 8 applies to

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 (the **affected councils**).

Clause 5 amends the principal order to clarify that buying properties affected by Cyclone Gabrielle constitutes cyclone response or recovery. This provides the affected councils with legal certainty that buyout decisions, in relation to response or recovery, will not require an amendment to their long-term plan.

Clause 6 extends the exemption from section 97(1)(a) and (2) of the Act to Auckland Council and Napier City Council, but solely for the purpose of buying properties affected by the severe weather events. This will support Auckland Council and Napier City Council in their intent to start purchasing properties for the remainder of the current financial year. The other regulatory relief that the principal order provides for is not extended to Auckland Council or Napier City Council.

Auckland Council and Napier City Council are still required to consult their communities on the decision to purchase affected properties. They must comply with the principles of consultation under section 82 of the Act, to the extent that it is reasonably practicable to do so in the circumstances. Each council will determine what form of consultation is appropriate given its individual circumstances.

Under section 97 of the Act, councils may not commence a new significant activity or significantly change service levels of an existing activity if those things are not provided for in their long-term plan. Given its scale and costs, a decision to purchase affected properties risks activating section 97 of the Act. Without modifying that section, the affected councils, Auckland Council, and Napier City Council may need to go through the prescribed amendment process before they can negotiate the purchase of affected properties with the owners. The amendment process takes a considerable amount of time and would effectively delay the purchase of affected properties. On the other hand, proceeding without amending their long-term plan would expose councils to the risk of their decision to buy affected properties being challenged in the courts for not being consistent with section 97 of the Act.

This order is therefore desirable and consistent with the SWERLA's purpose. It provides certainty to affected property owners as early as possible. It ensures that the process to resolve the future of damaged and at-risk land progresses without additional delays. It provides legal certainty for councils that they may proceed with a decision to purchase affected properties to facilitate planning, rebuilding, and recovery of land, infrastructure, and properties of affected communities or persons. This order is not broader than reasonably necessary as the amendments are limited to specified councils. The exemption from section 97(1)(a) and (2) of the Act also applies only until 30 June 2024.

The relevant Minister is further satisfied that this order does not breach section 11 of the SWERLA, and that it does not 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 SWERLA 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 relevant Minister had regard to the recommendations and comments provided by them.

Issued under the authority of the Legislation Act 2019.
Date of notification in *Gazette*: 21 September 2023.

Notes

1 *General*

This is a consolidation of the Severe Weather Emergency Recovery (Local Government) Amendment 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) Order 2023 (SL 2023/120): clause 3(2)