

Version
as at 1 July 2024



Severe Weather Emergency Recovery (Land Transport Funding) Order 2023

(SL 2023/216)

Severe Weather Emergency Recovery (Land Transport Funding) Order 2023: revoked, on the close of 30 June 2024, by clause 3.

Cindy Kiro, Governor-General

Order in Council

At Wellington this 28th day of August 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 Transport 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 Ministry of Transport.

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Order

1 Title

This order is the Severe Weather Emergency Recovery (Land Transport Funding) Order 2023.

2 Commencement

This order comes into force on 1 September 2023.

3 Revocation

This order is revoked on the close of 30 June 2024.

4 Interpretation

- (1) In this order, unless the context otherwise requires,—
Act means the Land Transport Management Act 2003
affected rail route has the meaning given in clause 8

affected road route has the meaning given in clause 5

Agency means the New Zealand Transport Agency, also known as Waka Kotahi

NAL means the North Auckland railway line

New Zealand Railways Corporation means the corporation constituted under section 4 of the New Zealand Railways Corporation Act 1981

NZTM means the New Zealand Transverse Mercator 2000 projection

PNGL means the Palmerston North to Gisborne railway line

rail recovery activity—

- (a) means any activity that, because of or in connection with a severe weather event, it is necessary or desirable to undertake, without undue delay, to restore the function of an affected rail route and enable it to be used fully, effectually, and safely; and
- (b) includes any activity necessary or desirable to—
 - (i) repair or rebuild an affected rail route in the same or a similar location; and
 - (ii) enhance the safety and improve the resilience of an affected rail route

railway land means all land held by the Crown for railway purposes (including land held by the Crown acting by or through New Zealand Railways Corporation)

road recovery activity—

- (a) means any activity that, because of or in connection with a severe weather event, it is necessary or desirable to undertake, without undue delay, to restore the function of an affected road route and enable it to be used fully, effectually, and safely; and
- (b) includes any activity necessary or desirable to—
 - (i) repair or rebuild an affected road route in the same or a similar location; and
 - (ii) enhance the safety and improve the resilience of an affected road route

severe weather event has the meaning given in section 4(1) of the Severe Weather Emergency Recovery Legislation Act 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 it had been amended in the manner indicated in this order.
- (3) A term used in this order that is defined in the Act, but not in this order, has the meaning given in the Act.

Part 1

Modification of requirements regarding funding for road recovery activities

5 Application of this Part

- (1) This Part applies only to affected road routes.
- (2) In this order, **affected road route**—
 - (a) means a section of State highway affected by a severe weather event and specified in Part 1 of the Schedule; and
 - (b) includes all land, infrastructure, and other property adjacent to or associated with the section of State highway referred to in paragraph (a).

6 Variation of regional land transport plan for road recovery activities

- (1) Subclause (2)—
 - (a) modifies section 18D of the Act; and
 - (b) applies despite section 18D(5) of the Act.
- (2) A regional transport committee that prepares a variation to its regional land transport plan under section 18D in respect of a road recovery activity is not required to consult on the variation.
- (3) Section 18D(6) applies as if, after the words “Section 18B applies, with the necessary modifications”, there were inserted the words “(including that in section 18B(4)(a) the words “that has been consulted on in accordance with sections 18 and 18A” must be treated as having been deleted)”.

7 Approval for funding under national land transport fund for road recovery activities

- (1) This clause modifies section 20 of the Act.
- (2) This clause applies if the Agency is deciding whether to approve a road recovery activity or combination of road recovery activities as qualifying for payments from the national land transport fund under section 20(1) of the Act.
- (3) In approving a proposed activity or a combination of activities, the Agency—
 - (a) is not required to be satisfied of the matters in section 20(2)(a), (b), and (c)(i); and
 - (b) is not required to be satisfied of the matters in section 20(2)(f), except that the Agency must be satisfied that the consultation requirements in section 18G of the Act (separate consultation with Māori on particular activities) have been complied with if relevant; and
 - (c) is not required to take into account any national energy efficiency and conservation strategy despite section 20(3)(a)(i) of the Act.

Part 2

Modification of requirements regarding funding for rail recovery activities

8 Application of this Part

- (1) This Part applies only to affected rail routes.
- (2) In this order, **affected rail route**—
 - (a) means a section of railway land affected by a severe weather event and specified in Part 2 of the Schedule; and
 - (b) includes all land, infrastructure, and other property adjacent to or associated with the section of railway land referred to in paragraph (a).

9 Approval for funding under national land transport fund for rail recovery activities

- (1) This clause modifies section 22F of the Act.
- (2) This clause applies if the Minister is deciding whether to approve a rail recovery activity or combination of rail recovery activities to be funded or partially funded by the national land transport fund under section 22F(1) of the Act.
- (3) Section 22F(2) of the Act does not apply to the Minister's decision, except for section 22F(2)(b)(i) (which requires the Minister to first consult KiwiRail's shareholding Ministers).

Part 3

Modification of requirements applying to both road and rail recovery activities

10 Application of this Part

This Part applies to road recovery activities and rail recovery activities.

11 Amendment of GPS on land transport

- (1) This clause applies if the Minister amends a GPS on land transport under section 90(1) of the Act in relation to a road recovery activity or a rail recovery activity.
- (2) Subclause (3) modifies section 90 of the Act and subclause (4) modifies section 19E of the Act.
- (3) The provisions of the Act regarding the preparation and availability of a GPS on land transport do not apply to the amendment, despite section 90(2) of the Act.
- (4) The Agency is not required to comply with section 19E(3) of the Act (which requires the Agency to vary the national land transport programme as soon as practicable if necessary to give effect to the amendment).

Schedule

Affected road and rail routes

cls 5(2), 8(2)

Part 1

Sections of State highway affected by severe weather event

Area	Location name	NZTM co-ordinates
Hawke's Bay	SH2: Waikare River bridge to district boundary (approx 107 km)	x 1945491.98 and y 5661324.12 to x 2017244.48 and y 5681706.99
	SH2: SH5 intersection through to Waikare bridge (approx 55 km)	x 1933789.01 and y 5632157.29 to x 1945494.47 and y 5661322.61
	SH38: Wairoa to Tuai (approx 47 km)	x 1982429.69 and y 5671738.5 to x 1959995.63 and y 5694931.49
	SH5: intersection with SH2 to Pohokura Road (approx 76 km)	x 1933787.99 and y 5632157.31 to x 1904556.67 and y 5683112.38
	SH50: Mangamate Stream bridge (approx 250 m)	x 1897346.38 and y 5590680.88
	SH50: Tukipo Stream (approx 250 m)	x 1884776.9 and y 5570742.05
	SH50: Makaretu River bridge (approx 250 m)	x 1883646.33 and y 5565259.17
	SH50: Glencoe Gorge (approx 250 m)	x 1905724.09 and y 5600869.54
	SH50: Mangaonuku #3 (approx 250 m)	x 1898604.62 and y 5593567.37
	SH51: Tutaekuri River bridge (approx 1 km)	x 1937049.06 and y 5613595.93
Gisborne	SH35: Cemetery Road to Tokomaru township (approx 8.5 km)	x 2065788.21 and y 5774189.01 to x 2065868.33 and y 5766953.25
	SH35: Te Puia to Makarika Road (approx 14 km)	x 2065875.84 and y 5774976.98 to x 2060969.79 and y 5786242.37
	SH35: Poroporo Road to Whakaangi Road (approx 13 km)	x 2074803.62 and y 5804054.16 to x 2071651.89 and y 5815333.66
	SH35: Turihauā (approx 1.5 km)	x 2049102.55 and y 5711709.96 to x 2050227.31 and y 5711721.01
	SH35: Hikuwai River bridge (approx 500 m)	x 2059736.92 and y 5753429.47 to x 2059663.47 and y 5753013.85
	SH2: Waihuka Road to Te Wera Road (approx 31 km)	x 2015668.33 and y 5733074.7 to x 1990556.38 and y 5742475.32
Waikato	SH25A: Taparahi (approx 200 m)	x 1836178.11 and y 5885897.96 to x 1836490.42 and y 5885647.75
	SH25A: Troups Falls (approx 100 m)	x 1838962.9 and y 5884408.28 to x 1839078.15 and y 5884422.01
	SH25 northwest side: Kereta to Te Kouma (approx 14.3 km)	x 1816270.74 and y 5913969.79 to x 1822239.59 and y 5923090.36
	SH25 northeast side: Otapaurau to Wharekaho (approx 15.6 km)	x 1838557.74 and y 5929679.02 to x 1842803.28 and y 5925845.83
	SH25 southwest side: Tararu Road, Thames to Die Hard Home Stay (approx 16.4 km)	x 1824983.04 and y 5888272.79 to x 1822713.48 and y 5903074.62
	SH25 southeast side (middle section): Whenuakite to Pumpkin Hill (approx 7.5 km)	x 1849587.86 and y 5907217.92 to x 1852969.80 and y 5903383.98

Area	Location name	NZTM co-ordinates
	SH25 southeast side (bottom of peninsula): Tairua Road, Hikuai to Opoutere (approx 8.6 km)	x 1848828.40 and y 5890129.77 to x 1852575.06 and y 5888385.93
	SH2: Karangahake Gorge (approx 100 m)	x 1845518.46 and y 5855973.64 to x 1845624.9 and y 5855981.7
	SH27: Kaihere (approx 1 km)	x 1815460.05 and y 5860127.04 to x 1815437.36 and y 5860147.05
Auckland	SH1: Puhoi to Dome Valley (approx 10 km)	x 1739815.57 and y 5977353.19 to x 1745801.54 and y 5973884.86
	SH1: Puhoi to Pohuehue (approx 1 km)	x 1748544 and y 5960190 to x 1749038 and y 5959212
	SH1: South of Warkworth (approx 500 m)	x 1748051.66 and y 5964860.51
Northland	SH1: Brynderwyns (approx 15 km)	x 1727470.55 and y 6011433.3 to x 1728749.67 and y 6004365.27
	SH10: Waitangi River bridge (approx 100 m)	x 1686938.4 and y 6093511.95

Part 2

Sections of railway land affected by severe weather event

Area	Location name	Kilometre markers and NZTM co-ordinates
Manawatū-Whanganui	PNGL: Dannevirke and Kopua viaduct (approx 22 km)	55–77 km PNGL: x 1864522 and y 5545772 to x 1879865 and y 5556613
	PNGL: south of Hastings through to Wairoa (approx 104 km)	280–296 km PNGL (Wairoa): x 1972541 and y 5667950 to x 1983715 and y 5671158
		191–268 km PNGL (Eskdale– Waihua): x 1933962 and y 5630691 to x 1963517 and y 5666081
		169–172 km PNGL (Clive– Awatoto): x 1936399 and y 5612105 to x 1936903 and y 5614959
		143–151 km PNGL (Te Hauke– Pakipaki): x 1920139 and y 5592726 to x 1925268 and y 5598607
	PNGL: Wairoa to regional boundary (approx 51 km)	296–347 km PNGL: x 1983715 and y 5671158 to x 2021174 and y 567578
Gisborne	PNGL: full distance in Gisborne region (approx 44 km)	347–391 km PNGL: x 2021174 and y 5675768 to x 2037451 and y 5707652
Auckland	NAL: Kanohi to regional boundary (approx 47 km)	83–130 km NAL: x 1736287 and y 5953125 to x 1733050 and y 5990276
Northland	NAL: regional boundary to south of Whangārei (approx 67 km)	130–197 km NAL: x 1733050 and y 5990276 to x 1712473 and y 6030519

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 1 September 2023 and is revoked on the close of 30 June 2024.

The order streamlines requirements in the Land Transport Management Act 2003 (the **Act**) for the funding of road and rail recovery activities arising out of the severe weather events.

Part 1

Part 1 applies only to the sections of State highway specified in *Part 1 of the Schedule* and land, infrastructure, and other property adjacent to or associated with those sections of State highway.

The effect of *clause 6* is that a regional transport committee that prepares a variation to its regional land transport plan in respect of a road recovery activity is not required to consult on the variation.

Clause 7 provides that when Waka Kotahi is deciding whether to approve funding for a road recovery activity, it is not required—

- to be satisfied that the activity is included in the national land transport programme or qualifies to be included in the programme:
- to be satisfied that the national land transport programme continues to meet requirements in the Act:
- to be satisfied that the activity is consistent with the government policy statement (**GPS**) on land transport and is efficient and effective:
- to be satisfied that other consultation requirements have been complied with, except there must be consultation with Māori on particular activities:
- to take into account any national energy efficiency and conservation strategy.

Part 2

Part 2 applies only to sections of railway land specified in *Part 2 of the Schedule* and land, infrastructure, and other property adjacent to or associated with those sections of railway land.

Clause 9 allows the Minister to make a decision approving funding for a rail recovery activity even though—

- the activity is not included in a current or proposed rail network investment programme:
- the Minister has not considered particular advice from Waka Kotahi.

The Minister is still required to consult KiwiRail's shareholding Ministers before making the decision.

Part 3

Part 3 applies to the amendment of a GPS on land transport in relation to road or rail recovery activities. Under *clause 11*, the requirements in the Act about the preparation and availability of a GPS on land transport do not apply to the amendment. Further, the requirement in that Act for Waka Kotahi to vary the national land transport programme as soon as practicable to give effect to the amendment does not apply.

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 of Transport (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.

Clause 2 of the order provides that the order comes into force on 1 September 2023, and *clause 3* of the order provides that the order is revoked at the close of 30 June 2024. This will give sufficient time for recovery activities to be built into the 2024–27 National Land Transport Programme (**NLTP**) or the 2024–2027 rail network investment programme. Any road or rail activities not approved for National Land Transport Fund (**NLTF**) funding by 30 June 2024 under the modifications made by the order may be provided for in the 2024–2027 NLTP or the 2024–2027 rail network investment programme (as the case may be), after the order has been revoked. Both that NLTP and that programme take effect on 1 July 2024.

Part 1 of the order, which relates to funding of road recovery activities, applies only to the affected road routes specified in *Part 1 of the Schedule*. The application of the order to the specified affected road routes is necessary or desirable to enable an

effective and efficient response to short- and medium-term efforts to recover from the impacts of the severe weather events.

Clause 6 of Part 1 provides that, if a regional land transport committee prepares a variation to its regional land transport plan (**RLTP**) under section 18D of the Land Transport Management Act 2003 (the **Act**) in respect of a road recovery activity, the usual requirements for the committee to consult on the variation do not apply. RLTPs are unlikely to currently account for road recovery activities that are now necessary following the severe weather events. The modification allows the process for variations to RLTPs to be more streamlined to enable an effective and efficient response to short- and medium-term recovery efforts.

Clause 7 of Part 1 allows Waka Kotahi to expedite the process of deciding whether to approve a road recovery activity as qualifying for payments from NLTF by modifying the number of requirements that Waka Kotahi has to take into account in making its decision. Waka Kotahi is not required to—

- be satisfied that the relevant activity—
 - is included in the current 3-year NLTP, which took effect on 1 July 2021, and, consequentially, the requirement that the NLTP continue to meet statutory requirements prescribed in the Act; or
 - is consistent with the government policy statement (**GPS**) on land transport; or
 - complies with prescribed consultation requirements (other than the requirement in the Act that separate consultation is required with Māori on particular activities); or
- take into account any national energy efficiency and conservation strategy.

The modifications enable the process for deciding whether to approve a road recovery activity as qualifying for payments from the NLTF to be more flexible and efficient. The modifications are necessary or desirable because the NLTP and GPS do not currently account for road recovery activities that are now necessary. Modifying the need to comply with prescribed consultation requirements, other than separate consultation with Māori on particular activities, is necessary or desirable to enable Waka Kotahi to respond to the severe weather events quickly and more efficiently.

Part 2 of the order, which applies to funding of rail recovery activities, applies only to the affected sections of rail routes specified in *Part 2 of the Schedule*. The application of the order to the specified sections is necessary or desirable to allow recovery to commence as soon as possible.

Clause 9 modifies the requirement for the relevant Minister to take into account the following matters in deciding whether to approve funding:

- that the relevant activity is included in the current 3-year rail network investment programme, which took effect on 1 July 2021, or in a programme being considered for approval as a rail investment programme;
- Waka Kotahi's advice on the matter.

The relevant Minister still needs to consult KiwiRail's shareholding Ministers.

Because funding approvals under the rail network investment programme (or a programme being considered for approval as a rail investment programme) were made before the severe weather events, they do not reflect the requirements to fund the rail recovery activities now made necessary. The modifications are necessary or desirable to enable rail recovery funding decisions to be expedited, and to allow recovery to commence as soon as possible.

Part 3 of the order applies to both road and rail recovery activities.

Clause 11 enables Waka Kotahi to amend the GPS on land transport in respect of a road or rail recovery activity without complying with requirements relating to the preparation and availability of the GPS, and, in the case of road recovery activities, without varying the NLTP to give effect to the variation. These modifications would allow Waka Kotahi to, for example, increase the funding for recovery activities more easily. The modifications are necessary or desirable to enable the Act to operate more flexibly and efficiently to respond to the severe weather events under the SWERLA.

The *Schedule* lists the affected sections of road and rail routes to which the order applies. They are situated within a sub-set of the districts and regions to which the SWERLA applies.

Order not broader than reasonably necessary

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

The order will be in force for a limited period of time.

The application of *clauses 5 and 8* of the order is not broader than reasonably necessary because the geographic scope of the order is limited to specified road and railway routes that require recovery works funding.

Clause 6 is not broader than reasonably necessary because the scope of the modification it makes is limited to variations to an RLTP, and, other than modified consultation requirements, the usual requirements in respect of a variation to a RLTP remain.

Clause 7 is not broader than reasonably necessary because the modifications it makes will apply only until the close of 30 June 2024. The modifications address the issue that the current NLTP does not take into account funding of the road recovery works needed as a result of the severe weather events, whereas the future NLTP, which will apply for the period 1 July 2024 to 30 June 2027, will be able to make appropriate provision for funding those works.

Clause 9 is not broader than is reasonably necessary because the modifications it makes will apply only until the close of 30 June 2024. The modifications address the issue that the current rail network investment programme does not take into account funding of the rail recovery works needed as a result of the severe weather events, whereas the future rail network investment programme, which will apply for the period 1 July 2024 to 30 June 2027, will be able to make appropriate provision for funding those works.

Clause 11 applies to road and rail recovery activities necessitated by the severe weather events and modifies requirements relating to amendments to the GPS. *Clause 11* is not broader than is reasonably necessary because it will apply only for the period that the NLTP or the rail network investment programme is out of date, and its scope is limited to road and rail recovery activities.

Other preconditions satisfied

The other preconditions for recommending the making of the order have also been satisfied, as follows:

- the draft order was reviewed by the Severe Weather Events Recovery Review Panel:
- the draft order was provided to the Regulations Review Committee:
- the Minister has had regard to the recommendations and comments provided by those bodies and the order has 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*: 31 August 2023.

Notes

1 *General*

This is a consolidation of the Severe Weather Emergency Recovery (Land Transport Funding) 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 (Land Transport Funding) Order 2023 (SL 2023/216): clause 3