

Severe Weather Events Recovery Review Panel

23 May 2023

Hon Barbara Edmonds
Minister for Cyclone Recovery
Executive Wing
Parliament Buildings
WELLINGTON 6011

Hon Kieran McAnulty
Minister of Local Government
Executive Wing
Parliament Buildings
WELLINGTON 6011

via email

Dear Ministers

SEVERE WEATHER EMERGENCY RECOVERY (LOCAL GOVERNMENT) AMENDMENT ORDER 2023

On 22 May 2023 the Severe Weather Events Recovery Review Panel (the Review Panel) considered the above draft Order.

As required under section 16 of the Severe Weather Emergency Recovery Legislation Act 2023, please find attached the Review Panel's report on this draft Order, including our recommendations and brief comments.

We understand that the revised Order provided to you for further consideration will:

- a) include Wairoa in clause 5 as one of the local authorities receiving an extension of time to enter into the triennial agreement, which was omitted due to a drafting oversight;
- b) require local authorities to publish their reasons for concluding consultation was not reasonably practicable when choosing not to consult as provided for in clauses 7 and 10; and
- c) in clauses 8 and 9, include of an element of purposive control requiring actions taken in reliance on them to be for the purposes of the Act (to assist communities and local authorities to respond to, and recover from, the impacts of the severe weather events).

With these modifications, we recommend that you may reasonably consider the draft Order in Council to be necessary or desirable.

Yours sincerely

A handwritten signature in blue ink, reading "Denis Clifford", with a horizontal line underneath.

The Honourable Denis Clifford

Convenor, Severe Weather Events Recovery Review Panel

Severe Weather Events Recovery Review Panel

THE REVIEW PANEL

The Honourable Denis Clifford (Convenor)

Dr Charlotte Severne

Steve Wyn-Harris

Associate Professor Dr Hamish Rennie

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| REPORT AND RECOMMENDATION OF THE REVIEW PANEL |
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SEVERE WEATHER EMERGENCY RECOVERY (LOCAL GOVERNMENT) AMENDMENT ORDER 2023

1. We have been provided with a draft of the Severe Weather Emergency (local government) Order 2023 (the draft Order) for review under section 16 of the Severe Weather Emergency Recovery Legislation Act 2023 (the Act). We provide our recommendations on the draft Order as required by section 16(2) of the Act, based on the following understanding of our remit.
2. The task of the Severe Weather Events Recovery Review Panel (the Panel) is reviewing and making recommendations on the draft Order to assist the relevant Minister to meet the section 8(1) criteria of being satisfied an order is:
 - a. necessary and desirable for one or more purposes of the Act;
 - b. no broader than reasonably necessary;
 - c. consistent with section 11 (no effect on custody/ detention; no exemption/modification on constitutional legislative entitlements, including NZBORA); and
 - d. not an unjustified limit on NZBORA rights and freedoms;
 by supplementing the range of information and advice available to the Minister.
3. Paragraphs seven and 14 of the Terms of Reference for the Panel expand on this to provide that:
 - a. the Panel has been appointed to provide expert, technical advice and scrutiny of the draft Orders in Council; and
 - b. the Panel's recommendations may also address:
 - i. whether the draft Order in Council is sufficiently certain and clear, and if they are not, options to improve;
 - ii. the identification of any unintended or unforeseen but likely outcomes of the draft Order in Council, and ways to address these; and

- iii. any other matters the Panel considers relevant to the scope of its review of the draft Order in Council.
4. The criteria for the appointment of Panel members found in section 13(3) of the Act reflect the matters on which we consider we are to focus.
 5. Within that context the Panel's focus is the necessity and desirability of an order as required in section 8(1)(a)(i) of the Act.
 6. We have based our review on our collective assessment of the materials provided to us and on our individual experience and expertise. Other than as stated in this report, we have not undertaken any further enquiries.

Reasons Recommendations and Brief Comments

7. The draft Order proposes to modify the applications of the Local Government Act 2002 (the LGA), the Local Government (Rating) Act 2002 (the LGRA) and the Local Government (Financial Reporting and Prudence) Regulations 2014 for councils in severely affected areas who have not yet confirmed that they can/will meet legislative requirements.
8. To assist in reviewing the draft Order, officials provided the following materials:
 - a. the draft Severe Weather Emergency (Local Government) Order 2023;
 - b. the draft Statement of Reasons;
 - c. the Cabinet paper titled Approval to begin Order in Council processes relating to local government statutory processes in response to severe weather events;
 - d. the Consultation document for Severe Weather Emergency Recovery Legislation Act 2023; and
 - e. a table summarising the feedback received during consultation activities.
9. Additional supplementary information regarding the purpose of the draft Order and who was contacted during consultation was provided upon request of the Panel. The Panel also discussed the draft Order with officials from the Department of Internal Affairs and the Office of the Auditor-General.
10. When the panel reviewed the materials provided, the issue of the unfettered relaxation of requirements through clauses 8 and 9 was raised. The Panel were concerned that there was no control mechanism to ensure that the activities allowed by the relaxation of sections 97(1)(a) and (2)(a), and 101(3) of the Local Government Act 2002, are considered necessary and desirable by the local authority in order to respond to the severe weather events.
11. The Panel were also concerned with the exemption from the financial management benchmark obligations as provided in clause 12, as there is no replacement control and they are unclear as to the future significance of there being a year with which there is no benchmark.
12. The Panel sought clarification on these matters from officials at the Department of Internal Affairs and the Office of the Auditor-General. Following those conversations, we understand that the scope of clause 12 does not extend to substantive activities that must be undertaken, merely the reporting of them, and that the core controls of

financial stability such as requiring accounts to be audit by the Auditor-General still stand.

13. We enquired of the Office of the Auditor-General as to the extent of their consultation during the development of this policy and consider it to be limited. The Minister may wish to discuss this with officials.
14. We understand Wairoa will be included as one of the local authorities receiving an extension of time under clause 5 to enter into the triennial agreement, which was omitted due to a drafting oversight. We also understand officials will be checking to confirm whether any other local authorities within the Hawkes Bay region have or need extension for that part within the regional triennial agreements.
15. Following the discussion with officials, we understand the revised Order will:
 - a. include Wairoa in clause 5 as one of the local authorities receiving an extension of time to enter into the triennial agreement, which was omitted due to a drafting oversight;
 - b. require local authorities to publish their reasons for concluding consultation was not reasonably practicable when choosing not to consult as provided for in clauses 7 and 10; and
 - c. in clauses 8 and 9, include an element of purposive control equivalent to the “reasonably practicable” requirement found in clauses 7 and 10, requiring modifications made under clause 8 and 9 to be for the purposes of the Act (to assist communities and local authorities to respond to, and recover from, the impacts of the severe weather events).
16. Subsequent to those changes being made, based on the information before us, we are not aware of any reason why the Minister might not consider the Order to be necessary or desirable.



The Honourable Denis Clifford

Date: 23 May 2023

Convenor, Severe Weather Events Recovery Review Panel