

Severe Weather Events Recovery Review Panel

7 September 2023

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

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

via email

Dear Ministers

SEVERE WEATHER EMERGENCY RECOVERY (LOCAL GOVERNMENT) AMENDMENT ORDER 2023

On 7 September 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.

The Panel considers the Minister may conclude this draft Order is necessary and/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)

Associate Professor Dr Hamish Rennie

Dr Charlotte Severne

Steve Wyn-Harris ONZM

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 Recovery (Local Government) Amendment 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 the New Zealand Bill Of Rights Act); 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 or 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. Officials from the Department of Internal Affairs appeared before the Panel to respond to questions. 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 remove regulatory barriers that will delay councils from making decisions related to buying properties that were severely impacted by Cyclone Gabrielle and the early 2023 severe weather events.
8. Our understanding of the effect of this draft Order is to temporarily suspend section 97 of the Local Government Act 2002 (LGA) for Auckland and Napier Councils for the remainder of the financial year (ending 30 June 2024), by amending an earlier Order that provided the same relief for other councils (the Severe Weather Emergency Recovery (Local Government) Order 2023).
9. Additionally, the draft Order clarifies that the section 97 suspension in this amendment, and in the earlier Order created for the same purpose, applies to decisions about category three Future of Severely Affected Locations property buy outs.
10. To assist in reviewing the draft Order, officials provided the following materials:
 - a. the draft Severe Weather Emergency Recovery (Local Government) Amendment Order 2023;
 - b. the draft Statement of Reasons;
 - c. a Cabinet paper titled Proposed Order in Council under the Severe Weather Emergency Recovery Legislation Act 2023: Clarification of consultation requirements for specified councils
 - d. the consultation document; and
 - e. a table summarising the feedback received during consultation activities.
11. We understand the background to and reasons for the new clause 5(1A), but we note that secondary legislation such as this Order is not able to enlarge the scope of the activities authorised by the primary legislation (the Act).

12. The Panel considers the Minister may conclude this draft Order is necessary and/or desirable.

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

The Honourable Denis Clifford

Date: 7 September 2023

Convenor, Severe Weather Events Recovery Review Panel