

Severe Weather Events Recovery Review Panel

8 September 2023

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

Hon Rachel Brooking
Associate Minister for the Environment
Executive Wing
Parliament Buildings
WELLINGTON 6011

via email

Dear Ministers

SEVERE WEATHER EMERGENCY RECOVERY (RESOURCE MANAGEMENT - TIME EXTENSIONS) ORDER 2023 and SEVERE WEATHER EMERGENCY RECOVERY (RESOURCE MANAGEMENT – EXTENSION OF WATER PERMITS) ORDER 2023

On 8 September 2023 the Severe Weather Events Recovery Review Panel (the Review Panel) considered the above draft Orders.

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

Subject to the comments below, we are satisfied the Minister may conclude that the draft Orders are necessary and/or desirable:

1. The Panel understands that clause 5(1)(b) of the draft Severe Weather Emergency Recovery (Resource Management - Time Extensions) Order 2023 will be amended to practically provide for a 12-month extension (24-month total period) which will continue until the new prosecution timeframes in the Natural and Built Environment Act 2023 come into force.
2. We considered whether the Severe Weather Emergency Recovery (Resource Management – Extension of Water Permits) Order 2023 amendment to the Stock Exclusion Regulations should be limited in application through a causative link to the impacts of the North Island severe weather events, to avoid providing unintended advantage through this Order.

However, following discussion with officials and councils, and based on the knowledge and experience of panel members, we accept that there will only be a small number of people (if any) unintentionally advantaged and that providing an

effective limitation would create unhelpful complexity and uncertainty of application.

Yours sincerely

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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)

Rachel Devine

Dr Charlotte Severne

Associate Professor Dr Hamish Rennie

Liana Poutu

REPORT AND RECOMMENDATION OF THE REVIEW PANEL

SEVERE WEATHER EMERGENCY RECOVERY (RESOURCE MANAGEMENT - TIME EXTENSIONS) ORDER 2023 and SEVERE WEATHER EMERGENCY RECOVERY (RESOURCE MANAGEMENT – EXTENSION OF WATER PERMITS) ORDER 2023

1. We have been provided with drafts of the Severe Weather Emergency Recovery (Resource Management - Time Extensions) Order 2023 and Severe Weather Emergency Recovery (Resource Management – Extension of Water Permits) Order 2023 (the draft Orders) for review under section 16 of the Severe Weather Emergency Recovery Legislation Act 2023 (the Act). Having carried out that review, we now provide comments on the draft Orders 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 Orders to assist the relevant Minister to meet the section 8(1) criteria of being satisfied an Order is:
 - a. necessary or 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 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. We have also heard from officials from the Ministry for the Environment, affected local councils and Parliamentary Counsel Office. Other than as stated in this report, we have not undertaken any further enquiries.

Recommendations and Brief Comments

- 7. We understand the policy intent of the draft Orders are to amend the Resource Management Act 1991 (RMA) to:
 - a. Give specified councils an additional 12 months to commence proceedings for RMA non-compliances.
 - b. Grant a small number of existing water take and use consent holders the ability to continue to exercise their existing consents while their new consent application is considered.
 - c. Provide councils and communities additional time to comply with the following national direction instruments:
 - i. National Policy Statement for Freshwater Management 2020;
 - ii. Resource Management (Stock Exclusion) Regulations 2020; and
 - iii. National Planning Standards.
- 8. The Panel received a package of supporting documentation when considering an earlier draft of this Order in tranche four. Additional, officials provided the following materials:
 - a. the draft Severe Weather Emergency Recovery (Resource Management - Time Extensions) Order 2023 and Severe Weather Emergency Recovery (Resource Management – Extension of Water Permits) Order 2023;
 - b. the draft Statements of Reasons;
 - c. a Cabinet paper titled Proposed Orders in Council under the Severe Weather Emergency Recovery Legislation Act 2023 – Tranche 5: statutory timeframes under the RMA for enforcement, expired water take consents, and national direction;
 - d. the consultation documents; and
 - e. tables summarising the feedback received during consultation activities.

9. Subject to the comments below, we are satisfied the Minister may conclude that the draft Orders are necessary and/or desirable:
- a. The Panel understands that clause 5(1)(b) of the draft Severe Weather Emergency Recovery (Resource Management - Time Extensions) Order 2023 will be amended to practically provide for a 12-month extension (24-month total period) which will continue until the new prosecution timeframes in the Natural and Built Environment Act 2023 come into force.
 - b. We considered whether the Severe Weather Emergency Recovery (Resource Management – Extension of Water Permits) Order 2023 amendment to the Stock Exclusion Regulations should be limited in application through a causative link to the impacts of the North Island severe weather events, to avoid providing unintended advantage through this Order.
- However, following discussion with officials and councils, and based on the knowledge and experience of panel members, we accept that there will only be a small number of people (if any) unintentionally advantaged and that providing an effective limitation would create unhelpful complexity and uncertainty of application.
10. On that basis, and notwithstanding the possibility of some parties not affected by the severe weather events being relieved of fencing obligations, we reached our view on necessity and desirability. This is an issue you may wish to give particular consideration to also.

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The Honourable Denis Clifford

Date: 8 September 2023

Convenor, Severe Weather Events Recovery Review Panel