

Severe Weather Events Recovery Review Panel

15 September 2023

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

Hon David Parker
Minister of Transport
Executive Wing
Parliament Buildings
WELLINGTON 6011

via email

Dear Ministers

SEVERE WEATHER EMERGENCY RECOVERY (KIWIRAIL HOLDINGS LIMITED) ORDER 2023 AND SEVERE WEATHER EMERGENCY RECOVERY (WAKA KOTAHI) ORDER 2023

On 15 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.

We conclude that the Minister may reasonably consider these Orders to be necessary and/or desirable.

Yours sincerely

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

The Honourable Denis Clifford

Convenor, Severe Weather Events Recovery Review Panel

SEVERE WEATHER EMERGENCY RECOVERY (KIWIRAIL HOLDINGS LIMITED) ORDER 2023 AND SEVERE WEATHER EMERGENCY RECOVERY (WAKA KOTAHI) ORDER 2023

Severe Weather Events Recovery Review Panel

THE REVIEW PANEL

The Honourable Denis Clifford (Convenor)

Steve Wyn-Harris ONZM

Natalie Coates

Rachael Schmidt-McCleave

Anne Carter

REPORT AND RECOMMENDATION OF THE REVIEW PANEL
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SEVERE WEATHER EMERGENCY RECOVERY (KIWIRAIL HOLDINGS LIMITED) ORDER 2023 AND SEVERE WEATHER EMERGENCY RECOVERY (WAKA KOTAHI) ORDER 2023

1. We have been provided with drafts of the Severe Weather Emergency Recovery (KiwiRail Holdings Limited) Order 2023 and Severe Weather Emergency Recovery (Waka Kotahi) Order 2023 (the draft Orders) for review under section 16 of the Severe Weather Emergency Recovery Legislation Act 2023 (the Act). We provide our recommendations 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 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 Ministry of Transport, Waka Kotahi, KiwiRail, Ministry for the Environment, Department of Conservation, Land Information New Zealand and Parliamentary Counsel Office attended a session with 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 Orders propose to facilitate the recovery and rebuild of the road and rail network in locations affected by the severe weather events, by amending current legislative process to reduce timeframes for matters such as consenting.
8. Our understanding of the effect of this draft Order is that, for Waka Kotahi an activity consent is provided for to use state highway land to repair state highways, and use land adjoining temporarily, to facilitate the repair of state highways. The same activity consent is provided for KiwiRail with additional powers of acquisition for Awatoto and Eskdale Valley locations.
9. To assist in reviewing the draft Orders, officials provided the following materials:
 - a. the draft Severe Weather Emergency Recovery (KiwiRail Holdings Limited) Order 2023 and Severe Weather Emergency Recovery (Waka Kotahi) 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 – KiwiRail and Waka Kotahi Repair and Recovery Works, and Land Transport Management Act 2003 amendments;
 - d. the consultation documents; and
 - e. a table summarising the feedback received during consultation activities.
10. We understand the need for the road and rail recovery works to be undertaken at speed, and note the protections in place to ensure these draft Orders go no further than reasonably necessary.
11. We note that these draft Orders will be necessary and desirable to the extent that they do in fact facilitate early repair work to be undertaken, and if no early repair work is forthcoming, then that assessment may change.
12. We recommend that the Orders would benefit from some clarifications:

- a. clarifying the nature and policy intent behind clauses 9 to 11, and clause 12 in the Waka Kotahi draft Order, and the corresponding references in the KiwiRail draft Order, perhaps through additions to the Statements of Reasons and explanatory notes; and
- b. make clear the definition of protected Māori land that is being relied upon through a cross-reference to the Public Works Act 1981 and Infrastructure Funding and Finance Act 2020.

13. We conclude that the Minister may reasonably consider these Orders to be necessary and/or desirable.

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The Honourable Denis Clifford

Date: 15 September 2023

Convenor, Severe Weather Events Recovery Review Panel