

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— STREAMLINED PLANNING PROCESS) AMENDMENT ORDER 2023

On 8 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.

We are not aware of any reason why the Minister might not consider the Order to be necessary and/or desirable. However, the Order would benefit from the following clarifications;

- a. that the SWER-SPP can be used to incorporate matters that may be included in a freshwater planning process;
- b. for a local authority to use the SWER-SPP, they must only notify the Minister appropriately, and that Ministerial permission is not required; and
- c. the broad empowerment of housing and papakāinga does not have a limiting effect on the development of papakāinga. This may be given effect to by indicating that papakāinga may also be established under this Order on general title land.

Further, based on our discussions with officials, if the intention of this Order is to provide timely papakāinga, then broader issues, such as those around Te Ture Whenua Māori Act

1993, may need to be addressed, understanding that this is out of scope for this Order.

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)

Associate Professor Dr Hamish Rennie

Rachel Devine

Liana Poutu

Dr Charlotte Severne

REPORT AND RECOMMENDATION OF THE REVIEW PANEL

SEVERE WEATHER EMERGENCY RECOVERY (RESOURCE MANAGEMENT—STREAMLINED PLANNING PROCESS) AMENDMENT ORDER 2023

1. We have been provided with a draft of the Severe Weather Emergency (Resource Management—Streamlined Planning Process) 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. The Panel met with officials from the Ministry for Housing and Urban Development, the Ministry for the Environment and Parliamentary Counsel Office. 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 Part 5 of Schedule 1 of the Resource Management Act 1991 (RMA). This would enable specified local authorities to rezone land by using a modified version of the Streamlined Planning Process in the RMA. This process would be known as the Severe Weather Emergency Recovery Streamlined Planning Process (SWER-SPP).
8. The draft Order would act as the Ministerial direction, meaning specified local authorities would not need to apply to use the process, instead they must only notify the Minister they would want to use the SWER-SPP. The content of a direction under clause 78 of schedule one is incorporated directly into the draft Order.
9. Our understanding of the effect of this draft Order is that it will support the implementation of recovery plans by enabling new housing and papakāinga areas (and related activities) to be able to deliver permanent housing solutions sooner than under normal processes.
10. To assist in reviewing the draft Order, officials provided the following materials:
 - a. the draft Severe Weather Emergency (Resource Management—Streamlined Planning Process) 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 – Permanent housing and papakāinga;
 - d. the consultation document; and
 - e. a table summarising the feedback received during consultation activities.
11. Based on our considerations and discussions with officials, the Panel considers the draft Order would benefit from;
 - a. making it clear that the SWER-SPP can be used to incorporate matters that may be included in a freshwater planning process;
 - b. clearly reflecting that for a local authority to use the SWER-SPP, they must only notify the Minister appropriately, and that Ministerial permission is not required; and

- c. ensuring that the broad empowerment of housing and papakāinga does not have a limiting effect on the development of papakāinga. This may be given effect to by indicating that papakāinga may also be established under this Order on general title land.
12. Further, if the intention is to provide timely papakāinga, then broader issues around Te Ture Whenua Māori Act 1993 may need to be addressed, understanding that this is out of scope for this draft Order.
 13. Notwithstanding this feedback, based on the information before us, we are not aware of any reason why the Minister might not consider the draft Order to be necessary and/or desirable.

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

The Honourable Denis Clifford

Date: 8 September

Convenor, Severe Weather Events Recovery Review Panel