

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 (WASTE MANAGEMENT) 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 mindful that what is proposed is the authorisation of landfills and waste facilities that deal with the extraordinary waste created by the weather events and are significant in themselves and deviate from the complexity of the usual processes that manage such infrastructure under the RMA. Consequently, this draft Order must be clear about the provisions of the RMA and plan provisions that are being overridden and what is being authorised. We consider that draft Order (v.8) is not sufficiently clear in this regard.

While we see the need for the facilitation of severe weather event waste disposal, given the concerns raised above and in the attached, and based on the information before us, we are unable to determine whether the draft Order is necessary 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 Events Recovery Review Panel

THE REVIEW PANEL

The Honourable Denis Clifford (Convenor)

Rachel Devine

Associate Professor Dr Hamish Rennie

Liana Poutu

REPORT AND RECOMMENDATION OF THE REVIEW PANEL

SEVERE WEATHER EMERGENCY RECOVERY (WASTE MANAGEMENT) ORDER 2023

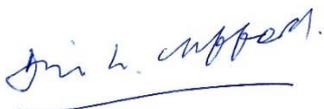
1. We have been provided with a draft of the Severe Weather Emergency (Waste Management) Order 2023 (the draft Order) for review under section 16 of the Severe Weather Emergency Recovery Legislation Act 2023 (the Act). Having carried out that review, we now provide comments on the draft Order as required 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 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, Ministry of Transport, Parliamentary Counsel Office, and relevant local authorities. 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 Order is to change the Resource Management Act 1991 to assist and expedite management of severe weather waste by enabling:
 - a. activities associated with establishing new class 4 and 5 landfills (as defined in the Waste Minimisation Act 2008) to be treated as permitted activities, with standards included to mitigate any environmental impacts;
 - b. activities associated with establishing new class 2 and 3 landfills (as defined in the Waste Minimisation Act 2008) to be treated as controlled activities, with conditions to manage any environmental impacts; and
 - c. existing landfill activities established under emergency powers to become similarly permitted and controlled activities.
8. The Panel received a package of supporting documentation when considering an earlier draft of this Order in tranche four. Additionally, officials provided the following materials:
 - a. the updated draft Severe Weather Emergency (Waste Management) Order 2023;
 - b. the updated draft Statement of Reasons; and
 - c. a memo summarising the changes made since the draft Order was last considered in tranche four.
9. We have also met with officials to discuss the draft Order, along with representatives of local authorities, and suggested revised drafting to better provide for the policy intent.
10. We are mindful that what is proposed is the authorisation of landfills and waste facilities that deal with the extraordinary waste created by the weather events and are significant in themselves and deviate from the complexity of the usual processes that manage such infrastructure under the RMA. Consequently, this draft Order must be clear about the provisions of the RMA and plan provisions that are being overridden and what is being authorised. We consider that draft Order (version 8.0) is not sufficiently clear in this regard and that causes us difficulty in assessing whether the draft Order is necessary or desirable.
11. The relationship of the draft Order and existing rules in plans and proposed plans needs more clarity. If existing rules are not overridden, then the draft Order will not provide a streamlined process for the management and disposal of waste.

12. The draft Order intends to authorise (via permitted activity status or a resource consent) a wide range of waste activities described in Technical Guidelines. It is not clear how that authorisation intersects with sections 9, 12, 13, 14, and 15 of the RMA. For example, will the resource consents granted include land use and discharge consents?
13. Providing clarity helps provide certainty about the nature of activities being authorised and would also assist to identify the duration of any resource consents granted in accordance with the draft Order. At present it is not clear whether the consents are intended to continue beyond the expiry of the draft Order and if so for how long.
14. The Technical Guidelines are used to identify the scope of activities encompassed by the order, for example identifying what activities are involved in class 2, 3, 4 and 5 landfills. We have several concerns with this approach:
 - a. The approach taken in the Technical Guidelines regarding the identification of landfills differs from that taken in secondary legislation under the Waste Minimisation Act 2008. It is unclear whether the ramifications of choosing a different approach have been considered.
 - b. The Technical Guidelines group classes of landfills differently to how they are grouped in the draft Order. This lack of clarity could provide practical problems around the classification of certain activities as permitted or controlled which are not evident at present.
 - c. The draft Order refers to decommissioning activities and the Technical Guidelines do not define or appear to use that term. The scope of such activities is therefore uncertain.
15. The draft Order contains other, more minor, errors. Clause 14 (1)(d) should refer to subsection (2), not subsection (3). Schedule 1 clause (1) and Schedule 2 clause (1) should refer to activities regulated by the draft Order, so they do not apply to activities beyond the scope of the draft Order.
16. These concerns have been raised with officials. The revised draft Order provided to us (version 8.0) does not address these concerns adequately. Providing this level of clarity on the effect of the draft Order is important to ensure certainty for those relying upon this draft Order in the future.
17. While we see the need for the facilitation of waste disposal, given the concerns raised above and based on the information before us, we are unable to determine whether the draft Order is necessary or desirable.



The Honourable Denis Clifford

Date: 8 September 2023

Convenor, Severe Weather Events Recovery Review Panel