

Severe Weather Events Recovery Review Panel

28 July 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

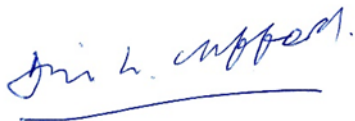
Dear Ministers

SEVERE WEATHER EMERGENCY RECOVERY (LAND TRANSPORT FUNDING) ORDER 2023

On 28 July 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.

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)

Veronica Jacobsen

Steve Wyn-Harris

Anne Carter

Rachael-Schmidt McCleave

REPORT AND RECOMMENDATION OF THE REVIEW PANEL
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SEVERE WEATHER EMERGENCY RECOVERY (LAND TRANSPORT FUNDING) ORDER 2023

1. We have been provided with a draft of the Severe Weather Emergency (Land Transport Funding) 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 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. 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:
 - a. permit funding of 'recovery activities' in relation to road and rail;
 - b. exempt recovery activities from standard procurement procedures/requirements; and
 - c. provide for Government Policy Statement on Land Transport (GPS) amendments to change the maximum expenditure limits and activity class funding ranges in GPS 2021.
- 8. Our understanding of the effect of this draft Order is that it applies to Waka Kotahi and KiwiRail, as the two parties requiring funding allocation under the LTMA for the recovery works, that it is limited to the districts and regions in the SWERLA and would have effect until 30 June 2024. The exemptions and modifications of the LTMA provisions outlined in the draft Order will only be applicable to activities related to the aspect(s) of the purpose of the SWERLA.
- 9. We note that this Order is intended to cover funding, and that substantive issues such as decision-making and notification requirements will be addressed through subsequent Orders that will be progressed in later tranches.
- 10. To assist in reviewing the draft Order, officials provided the following materials:
 - d. the draft Severe Weather Emergency (local government) Order 2023;
 - e. the draft Statement of Reasons;
 - f. 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.
 - g. the consultation document; and
 - h. a table summarising the feedback received during consultation activities.

11. Based on the information before us, we consider that the Minister might reasonably consider the Order to be necessary or desirable.

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

The Honourable Denis Clifford

Date: 28 July 2023

Convenor, Severe Weather Events Recovery Review Panel