

## Severe Weather Events Recovery Review Panel

7 August 2024

Hon Mark Mitchell  
Minister for Emergency Management and  
Recovery  
Executive Wing  
Parliament Buildings  
**WELLINGTON 6011**

Hon Penny Simmonds  
Minister for the Environment  
Executive Wing  
Parliament Buildings  
**WELLINGTON 6011**

via email

Dear Ministers

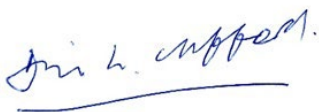
### **SEVERE WEATHER EMERGENCY RECOVERY (HAWKE'S BAY RURAL RECOVERY WORKS) ORDER 2024**

On 7 August 2024 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.

That report explains the basis upon which we consider you may properly conclude the draft Order, as amended, is necessary and/or desirable.

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)

Natalie Coates

Rachel Devine

Associate Professor Hamish Rennie

<b>REPORT AND RECOMMENDATION OF THE REVIEW PANEL</b>
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### **SEVERE WEATHER EMERGENCY RECOVERY (HAWKE'S BAY RURAL RECOVERY WORKS) ORDER 2024**

1. We have been provided with a draft of the Severe Weather Emergency (Hawke's Bay Rural Recovery Works) Order 2024 (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. To assist in reviewing the draft Order, officials provided the following materials:
  - a. the draft Severe Weather Emergency (Hawke's Bay Rural Recovery Works) Order 2024;
  - b. the draft Statement of Reasons;
  - c. a Cabinet paper titled 'Proposed Order in Council under the Severe Weather Emergency Recovery Legislation Act 2023 – Hawke's Bay Rural Recovery Works';
  - d. the consultation document;
  - e. a table summarising the feedback received during consultation activities; and
  - f. A draft Treaty Impact Analysis for the proposed Order.
7. We have based our review on our collective assessment of the materials provided to us, our discussions with officials 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**

8. The draft Order proposes to reclassify certain activities (defined as 'rural recovery works') which would otherwise require a resource consent, as permitted activities under the Resource Management Act 1991 (RMA) if the landowner meets the notification requirements and complies with the permitted activity standards.
9. Our understanding of the effect of this draft Order is that it would apply to rural land in the Hawke's Bay. It proposes to cover a range of works intended to remediate, repair or mitigate damage caused by the North Island Weather Events, and to be in place until April 2026.
  - a. Supplemental information provided to the Panel has outlined that this work is intended to include; realignment of streams and reclamation of beds, earthworks or removal of debris and vegetation in or within 5 metres of a waterway, deposition of silt within 20 metres of a stream, earthworks in certain forestry zones and bridge or culvert replacement. The work will not include bunding or river protection not previously in place to protect buildings or land.
  - b. The draft Order requires applicants to give notice of the intent and scope of their work at least 20 days before the works commence to the Hawke's Bay Regional Council, who will then forward a copy of the notice to the relevant territorial authority and Post Settlement Governance Entity. The draft Order also requires the works to be carried out in accordance with the permitted activity standards set out in Schedule 1.
10. The background materials provided to us emphasise the large scale of the problem the proposed Order is intended to address. In a survey of the owners of some 1500 Hawke's Bay farm properties in excess of 20 hectares, more than 200 reported severe weather event damage to property that was yet to be remediated. On almost all those properties, work on fences, tracks and eroded land was required. On more

than half, damage to water supply and stock watering plant was evident, as well as requirements to remediate damage from silt and sediment deposits on land, with associated access and planting requirements. A map prepared by Hawke's Bay Regional Council graphically illustrated the incidence of erosion damage across the region. More than half of the owners estimate a cost of remediation in excess of \$100,000.

11. By the same token, and notwithstanding the relief from RMA requirements provided by the now-expired Severe Weather Emergency Legislation Act 2023 (SWELA) permitted activity regime, the scale of work required is considerably greater than existing resources of money, plant, machinery and available work force have been able to deliver to date.
12. We have considered the possible impact of the relief from RMA requirements provided by the draft Order in that light. SWERLA (Severe Weather Emergency Recovery Legislation Act 2023) stipulates that you must be satisfied each Order is necessary or desirable for its purposes and that its extent "is not broader (including geographically broader in application) than is reasonably necessary to address the matters that gave rise" to it.
13. The principal ways the draft Order uses to achieve compliance with that requirement are found in the definition of "rural recovery works" and the requirements of the Schedule. It is works within that definition and complying with those requirements which under the draft Order are deemed to be complying activities under the plans of Hawke's Bay local authorities, and which hence do not require RMA resource consent. It is the savings of time, money and resources thereby achieved, and the contribution those savings make to the regions' recovery from the North Island Severe Weather Events, which we understand will be the benefit of the draft Order for the Hawke's Bay region.
14. As presently drafted, clause 6 of the draft Order provides:
  - a. Meaning of rural recovery works**

In this order, rural recovery works means works that—

    - (a) are for the purpose of reconstructing, repairing, or mitigating damage caused by a severe weather event; and
    - (b) are carried out on rural land; and
    - (c) for the purposes of the RMA, —
      - (i) would ordinarily require a resource consent; and
      - (ii) are not a prohibited activity under sections 2 and 87A of the RMA; and
    - (d) do not involve—
      - (i) the construction of new flood protection banks or bunds, structural edge protection including walls or revetments or groynes; or
      - (ii) installation or construction of new infrastructure, including new dams, not previously in place prior to the severe weather events; or
      - (iii) extraction or removal of gravel from the bed of a water body.

15. As relevant, the Schedule reads:

(1) General

- (1) The rural recovery works must be undertaken in such a way as to –
- (a) avoid, remedy, or mitigate adverse effects on the environment so far as is reasonably practicable; and
  - (b) avoid, if practicable, or minimise adverse effects on freshwater and marine water environments within or beyond the works boundary, with particular regard to reducing opportunities for the works to generate sediment; and
  - (c) avoid, if practicable, or minimise adverse effects on outstanding natural features and landscapes and significant natural areas; and
  - (d) avoid, if practicable, or minimise adverse effects on wāhi tapu, wāhi taonga, or areas of significance to Māori.
- (2) The rural recovery works must not cause significant adverse effects beyond the boundaries of the land.

16. We consider that to meet the “reasonably necessary” and “not broader” requirements those provisions should be amended:

- a. The addition of a purposive framework or effect clause to constrain clause 6 to denote that activities would be appropriate only if ‘reasonably necessary’, to ensure that the Order’s scope was similarly constrained as the purpose of the empowering legislation; and
- b. Change Clause 1(2) of the Schedule to read ‘The rural recovery works must not cause significant adverse effects.’, subtracting the words ‘beyond the boundaries of the land.’

17. We understand your officials and the local authorities agree with those amendments.

18. As well as incorporating the wording of SWERLA, those changes address one possibly unintended consequence of the current drafting. As drafted, clause (6) (b) (i), rural recovery works which would ‘not ordinarily require a resource consent’ are not covered by the draft Order. The exclusion of such works can therefore be seen as an appropriate limit on the draft Order. At the same time that “limitation”, and its controlling effects, can simply be avoided by varying the works in question so that they no longer are permitted activities under a plan, but rather are deemed complying activities under the draft Order.

19. In our view, the addition of the “reasonably necessary” wording, and the deletion of the words “beyond the boundaries of the land”, better enable local authorities to ensure works within the scope of the draft Order are limited to those which remediate and reinstate land damaged by the North Island Severe Weather Events to its pre-event condition, particularly as the draft Order does not provide a mechanism to address the cumulative effect of the widespread works that will be involved.

20. In this context we also note the important control role of clause 3 of the Schedule.

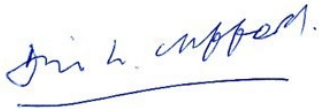
21. We have in addition, suggested to your officials this draft Order would benefit from;

- a. The clarification of language used to define rural recovery works – particularly the term ‘reconstructing of damage’ as opposed to remediation, as well as ensuring the consistent use or application of terms such as ‘avoid’, ‘remedy’, ‘mitigate’ and ‘as far as practicable’. Details of these, and a series of other minor drafting changes have been conveyed to Ministry for the Environment officials.
- b. Considering extending the notification period for Post Settlement Governance Entities to respond to any notices that are provided by the Council, with the proposed timeframe giving an effective seven days.

22. We understand your officials and the local authorities agree with those amendments.

23. Further, officials need to be satisfied that they have properly taken into account the rights provided by Treaty settlements, which are triggered by the need for RMA consents. Under this draft Order, while notified, the relevant PSGE may not have the same participation or decision-making power as if the notice had come through the standard RMA process.

24. Subject to these changes and considerations, we consider that the Ministers may well consider the Order to be necessary and/or desirable.



*Denis Clifford*

The Honourable Denis Clifford

Date: 7 August 2024

**Convenor, Severe Weather Events Recovery Review Panel**