

Severe Weather Events Recovery Review Panel

19 June 2023

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

Hon David Parker
Minister for the Environment
Executive Wing
Parliament Buildings
WELLINGTON 6011

via email

Dear Minister

SEVERE WEATHER EMERGENCY RECOVERY (RESOURCE MANAGEMENT— BURNING OF WASTE) ORDER 2023

On 19 June 2023 the Severe Weather Events Recovery Review Panel (the Review Panel) considered the above draft Order.

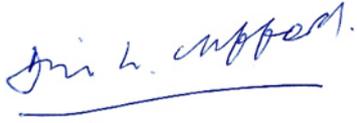
As required under section 16 of the Severe Weather Emergency Recovery Legislation Act 2023, please find attached the Review Panel's report on this draft Order, including our recommendations and brief comments.

We have not been given enough information to conclude that the draft Order is either necessary or desirable. We have no hard information about the volume, content or location of the material, or the area of land, the future and timely use of which, will be adversely affected unless the material is burnt.

At the same time, we have information on the hazards associated with the material, but no real understanding of the extent or severity of those hazards. Nor do we understand the linkage between the existing Department of Internal Affairs funding for the removal of debris and sediment, and this solution. Put simply, we are not in a position to assess the impact of the implementation of the proposal.

Should you wish to progress with this Order, we have provided further comments in the attached regarding how it might be improved.

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)

Dr Veronica Jacobsen

Associate Professor Dr Hamish Rennie

Rachael Schmidt-McCleave

REPORT AND RECOMMENDATION OF THE REVIEW PANEL
--

SEVERE WEATHER EMERGENCY RECOVERY (RESOURCE MANAGEMENT—BURNING OF WASTE) ORDER 2023

1. We have been provided with a draft of the Severe Weather Emergency Recovery (Resource Management—Burning of Waste) Order 2023 (the 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, and discussions with:
 - a. officials from the Ministry for the Environment;
 - b. Dr Charlotte Severn, Māori Trustee and Severe Weather Events Recovery Review Panel member (not sitting in this Division), who was consulted from a whenua Māori perspective; and
 - c. Ian Boothroyd, Ecologist and Associate Partner at Boffa Miskell, consulted as an independent subject matter expert to advise on the practical environmental impacts of the proposal, and potential ways to mitigate possible environmental effects.

Reasons Recommendations and Brief Comments

7. The draft Order proposes that the open air burning of cyclone and flood waste be a permitted activity in the Hawkes Bay and Te Tairāwhiti regions, from 27 June to 1 November 2023. To achieve this, the draft Order proposes temporary changes to the Resource Management Act 1991 (RMA), the Resource Management (National Environmental Standards for Air Quality) Regulations 2004(NES-AQ), and relevant plans.
8. To assist in reviewing the draft Order, officials provided the following materials:
 - a. a cover sheet;
 - b. the draft Severe Weather Emergency Recovery (Resource Management—Burning of Waste) Order 2023, including the draft Statement of Reasons;
 - c. a Cabinet paper titled Proposed Order in Council under the Severe Weather Emergency Recovery Legislation Act 2023 – Tranche 2: Burning cyclone and flood waste;
 - d. the consultation documents;
 - e. a table summarising the feedback received during consultation activities;
 - f. a PowerPoint presentation spoken to by Ministry for the Environment officials;
 - g. information from the Department of Internal Affairs regarding funding to process and dispose of debris coming from residential properties; and
 - h. the Hawke's Bay Horticulture Recovery Plan and Presentation.
9. We have not been given enough information to conclude that the draft Order is either necessary or desirable.

10. We have no hard information about the volume, content or location of the material, or the area of land, the future and timely use of which, will be adversely affected unless the material is burnt.
11. At the same time, we have information on the hazards associated with the material, but no real understanding of the extent or severity of those hazards. Nor do we understand the linkage between the existing Department of Internal Affairs funding for the removal of debris and sediment¹, and this solution.
12. Put simply, we are not in a position to assess the impact of the implementation of the proposal.
13. If the relevant Minister is to progress with the draft Order, it would be improved by better addressing risk through the Fire Management Plan (the Plan). This could include the expansion of the permitted activity standards schedule to require coordination of burns and control over the number of burns happening at any one time, and the assessment and supervision by local authorities of the Plans. An element of this must be more proactive and effective consultation with local whenua Māori land-owners and other residents, and notification to affected communities of the proposed burning. Additionally, the proximity to ecologically sensitive areas need to be addressed in the Plan.
14. It is anticipated there will be consequences of the responsible person of failing to meet the permitted activity standards. We understand as currently drafted that if the Plans do not work and there are exceedance events then they are to be ignored.
15. There is also a low standard currently drafted for the requirement to make efforts to remove from hazardous material from the waste. We recommend this be changed to require the landowner to take all reasonably practicable steps to remove the materials referenced in 1(a) of the Schedule of Permitted Activity Standards, and providing for consequences if they fail to do so.

Denis Clifford

The Honourable Denis Clifford

Date: 19 June 2023

Convenor, Severe Weather Events Recovery Review Panel

¹ <https://www.beehive.govt.nz/release/funding-silt-and-debris-removal-hawke%E2%80%99s-bay-and-tair%C4%81whiti>