

8. BURNSIDE PARK - FLETCHERS HUB EXTENSION



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| General Manager responsible: | General Manager City Environment, DDI 941-8608 |
| Officer responsible: | Unit Manager Asset and Network Planning |
| Author: | Eric Banks, Parks and Waterway Planner John Allen, Policy and Leasing Administrator |

PURPOSE OF REPORT

1. To enable the Fendalton/Waimairi Community Board to retrospectively consider an application made under the Canterbury Earthquake (Reserves Legislation) Order 2011 ("the Order") for an extension of the Fletchers Earthquake Repair Hub at Burnside Park, and after considering the application to make a recommendation to Council.

EXECUTIVE SUMMARY

2. The Council, through the powers vested to the Chief Executive Officer, granted Fletchers a warrant of occupation pursuant to the Canterbury Earthquake (Reserves Legislation) Order 2011 to occupy the building in Burnside Park, beside the playground fronting onto Avonhead Road, which is leased to the Riccarton Waimairi Lions. This is for the purpose of an administration office from which to administer the undertaking of repairs to earthquake damaged private dwellings in the adjacent residential area. This repair work is being undertaken after full assessments have been completed by the EQC.
3. The warrant was signed on 8 June of this year (2011) for an initial three year period, with Fletchers having the right to apply for a further one year extension finally ending on 19 June 2015.
4. At present there are 16 staff working out of this building. At the time the initial application was made, discussions were held with Council staff about the need in the future to increase the size of the office to accommodate more staff. This is to administer the increase in the number of repairs, resulting from a greater number of assessments of earthquake damage to properties being completed by the EQC.
5. The Council has received an application to extend the site from the original application and site two portacoms adjacent to the present building, as shown in the plans included in the application (**Attachment 1**). One portacom to house the extra 12 staff required measures 12x3 metres and is located on the north side of the existing building.
6. The siting of this portacom required a picnic table to be moved to a more appropriate location closer to the playground, to make room for the portacom to be moved onto the site. Fletchers intend to place a weatherproof sail between the existing office building and the new portacom office to protect staff from the weather when walking between the two buildings.
7. A second portacom measuring 6x3 metres is placed to the west of the present building between it and an adjacent fence within the park to house toilets, there being a need to increase the number of toilets at the Hub to accommodate the increased staff numbers.
8. The temporary portacom office and toilets have been attached to the sewage, high pressure water supply, and electrical services that service the present building on the site, being removed at the end of Fletcher's occupation of the site.
9. Unbeknown to staff a third temporary portacom measuring 6x3 metres has been placed on the site, which is used for meetings, as is shown on **Attachment 1**. Staff are comfortable with it being placed in the position shown and consequently are recommending that its placement on the reserve be approved.
10. The plans of the proposed temporary extension to the hub will be attached to the current "Warrant of Occupation" (refer to **Attachment 2**), the warrant itself being altered to accommodate the temporary additional portacoms being placed on the site.

11. Staff had drafted a memo informing the Board that permission had been granted to Fletchers for the hub extension. A letter granting conditional permission to proceed was sent to Fletchers on 19 November 2011 (refer to letter at **Attachment 3**). The original CEO approval did not allow for additional buildings and because all such approvals are now 'business as usual' Council elected member permission is sought for the extension to the buildings on the site, hence this report. At the time of writing this report construction was in progress and expected to be completed by Christmas. Therefore the Council approval sought is retrospective.
12. The majority of Burnside Park is classified as Recreation Reserve under the Reserves Act 1977. The Lion's Club building and the playground area on Avonhead Road are upon part of the reserve classified as Local Purpose (Community Buildings) Reserve, which has a legal description of Sec 1 SO 316071.
13. Staff believe the hub extension will have little impact on the park itself, next to none in the long term. Any damage to the grassed or sealed areas of the park will be made good by Fletchers following the cessation of Fletchers' Warrant of Occupation agreement, including the picnic table which can be restored to its original position. The Park Management Plan proposes the retention of the Lions Club building but the removal of the adjacent Council owned rented house. This area of the park is to be extensively reworked in the future.

FINANCIAL IMPLICATIONS

14. The Waimairi Lions Club, (now the Riccarton Waimairi Lions Club), have a lease agreement with the Council for use of the building, in consideration for which they pay a rental to Council. The Lions Club spent considerable monies, (over \$70,000) at the beginning of their lease period (lease period began 15 January 2003) bringing the former plant nursery building up to a community use standard. At the end of their lease period, if the lease is not renewed, the building and its improvements revert back to Council ownership at no cost to the Council. For the duration of Fletchers' occupation of the building, this lease is on hold. The building leased to the Lions Club was regularly made available to community groups to use. The building and grounds are owned by the Council as part of the park and therefore the agreement for the use of the site by Fletchers is with Council. Staff are recommending however that the rental payments by Fletchers, (\$150 per week), to Council are redirected to the Lions Club, less the amount Lions would pay normally as rent, thus enabling them to continue to financially support community initiatives as they have done in the past (refer to list of grants as shown in **Attachment 4**). The rent is being received by the club currently and by agreement is being held in a separate account pending the resolution of this matter.
15. The Council will be charging a bare ground rental to Fletchers' EQC for their occupation of the park land on which their additional temporary buildings are placed, this being delegated to the Corporate Support Manager and staff to manage.

Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?

16. There will be a slight increase to the revenue received by Council if the Officers' recommendations are approved, (see 14 above).

LEGAL CONSIDERATIONS

17. In response to the circumstances arising from the 22 February 2011 earthquake, the Government enacted the Canterbury Earthquake (Reserves Legislation) Order (No2) 2011, (the Order), pursuant to the Canterbury Earthquake Response and Recovery Act 2010 to enable reserves to be used for certain purposes which would not normally be permissible under the Reserves Act 1977, or other similar legislation, and thereby to avoid unnecessary delays in responding to circumstances arising from the earthquake.

18. The Order enables some temporary solutions to issues caused by the earthquakes to be accommodated on park and reserve land. The Order expires on 18 April 2016, this being the expiry date of the empowering legislation under which the Order has been made. The Order does not allow the use of parks and reserves for earthquake related purposes after its expiry date, unless the use would normally comply with uses allowed under the relevant legislation that the park and reserve is held under, and a permanent occupation right in accordance with that legislation has been granted, before the expiry of the Order.
19. The Council has the power under the Order to acquire the use of the building for earthquake repair purposes subject to complying with section 7 (Rights and Obligations of Third Parties Subject to Council Powers) of the Order. Clause 5(b)(ix) of the Order provides that the Council, or any person authorised in writing by the Council, or the Council's Chief Executive, may use a reserve or erect a structure on a reserve for works site offices.
20. The Order also provides that when the Council authorises any such use of a reserve, that it does not need to comply with any relevant management plan or the usual Reserves Act processes. However, under the warrant, Council has required Fletchers to take all reasonable steps to protect the integrity of the reserve and to ensure that the reserve is reinstated at the end of the use as closely as practicable to its prior condition as required by section 6(2) (a) and (b) of the Order. Refer to warrant attached in **Attachment 2**.
21. In addition to Council authorisation under the Order, Fletchers will also need to obtain all necessary resource and building consents required (if any) under the Building Act 2004 and the Resource Management Act 1991 or any Orders applicable to these acts made under the Canterbury Earthquake Response and Recovery Act 2010 for the proposed use. Approval under the Reserves Legislation Order does not constitute consent under those Acts.
22. The reason approval for the site offices is being sought under the Order is because occupations of park and reserve land for the purpose of temporary site offices for administration of repairs on other land is not allowed under the Reserves Act 1977, unless a temporary easement process under section 48 of that Act is worked through which includes public advertising, possible hearing and the Minister of Conservations approval under that Act, a process which takes a considerable period of time, which is not acceptable from the earthquake damage repair perspective.

Have you considered the legal implications of the issue under consideration?

23. Yes, above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

24. Yes – earthquake recovery.

Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?

25. As above.

ALIGNMENT WITH STRATEGIES

26. Not applicable.

Do the recommendations align with the Council's strategies?

27. Not applicable.

CONSULTATION FULFILMENT

28. Clause 6 of the Order expressly provides that the Council may act under the Order without complying with the Reserves Act 1977 (including any provision relating to public notification or the hearing of objections).

29. Clause 7 of the Order requires the Council to give notification to parties who have an easement, lease, licence, covenant or other legal right over the area of reserve to be temporarily occupied under the Order.
30. In addition, the Canterbury Earthquake (Local Government Act 2002) Order 2010 exempts the Council from compliance with some of the decision-making processes set out in the Local Government Act 2002. These include the requirement that the Council considers community views and preferences.
31. The exemptions can be relied upon in this case because it is necessary for the purpose of ensuring that Christchurch, the Council, and its communities respond to and recover from the impacts of the Canterbury Earthquakes.
32. The increase in activities occurring at the Hub should not inconvenience other legitimate park users, the normal business hours of operation for the Hub being outside the peak operating hours of sports clubs on the park. Letters have been sent to lessees on the park who officers deem could be affected by the increased activity occurring at the Hub as required by Clause 7(3) of the Order, namely the Gordon Scout Troup, Burnside Park Cricket Club, Burnside Park Associated Football Club (now known as FCTwenty11), Fendalton Tennis Club (now known as the Burnside Tennis Club), and the Riccarton Waimairi Lions Club.

STAFF RECOMMENDATION

It is recommended that pursuant to clause 5(b)(ix) of the Canterbury Earthquake (Reserves Legislation) Order 2011, the Fendalton/Waimairi Community Board recommend to the Council that:

- (a) it retrospectively authorises the use by Fletcher Construction Company Limited of that part of the local purpose (community buildings) reserve known as Burnside Park as is approximately shown on the application attached to this report (being **Attachment 1**) for the purpose of the installation of three portacom units;
- (b) it agrees that the period for which the authority referred to in paragraph (a) of this recommendation shall apply is that period commencing on the date of this authority until the 19 June 2014 or if any future application for an extension is approved, 19 June 2015 as is set out in the current warrant;
- (c) it approves the rent being received from Fletcher Construction Company Limited for their occupation of the building leased by the Riccarton Waimairi Lion's Club being paid to the Club to enable it to be used for community purposes, less the rent normally paid to the Council by the Club for their lease of the building; and
- (d) it approves for the charging of a bare ground rental to Fletcher's EQC for their occupation of the park land on which their additional temporary buildings are placed, this being delegated to the Corporate Support Manager and staff to manage.