



4. REINSTATING INFRASTRUCTURE IN CHRISTCHURCH

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PURPOSE OF REPORT

1. The purpose of this report is to seek the Council's endorsement of a process for dealing with reinstating infrastructure damaged in the Canterbury earthquake.
2. The report also recommends that the Chief Executive be given the authority to enter into and approve agreements and arrangements for the reinstatement work required.

EXECUTIVE SUMMARY

3. The Council has now entered the recovery phase of its response to the earthquake. Urgent work is required to reinstate infrastructure that was either damaged or destroyed.
4. Council staff recommend that collaborative working relationships be developed with contractors engaged to manage the re-instatement of infrastructure in four of the worst affected areas in Christchurch – Halswell, South Shore/Bexley, Brooklands/Kaingā and Avonside/Burwood/Dallington.
5. This proposal, and the process to be followed for its implementation comply with the relevant provisions of the Canterbury Earthquake Response and Recovery Act 2010 and Orders in Council made under that Act.

LEGAL CONSIDERATIONS

6. The Canterbury Earthquake Response and Recovery Act 2010 came into effect on 15 September 2010. Section 3 of the Act sets out its purpose. This is to:
 - (a) facilitate the response to the Canterbury earthquake;
 - (b) provide adequate statutory power to assist with that response;
 - (c) enable the relaxation or suspension of provisions in enactments that;
 - i. may divert resources away from the effort to-
 - efficiently respond to the damage caused by the earthquake;
 - minimise further damage; or
 - ii. may not be reasonably capable of being complied with, or complied with fully, owing to the circumstances resulting from the earthquake;
 - (d) facilitate the gathering of information about any structure or any infrastructure affected by the Canterbury earthquake that is relevant to understanding how to minimise the damage caused by future earthquakes;
 - (e) provide protection from liability for certain acts or omissions.
7. The Act also authorises the Governor General to make, from time to time, by Order in Council any provision reasonably necessary or expedient for the purpose of the Act. Any recommendation made by the relevant Minister of the Crown to the Governor General can not be challenged in court.
8. Further, no Order in Council may be held to be invalid because it authorises any act or omission that is inconsistent with any other Act.

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9. A number of Orders in Council have been made to date. These include:
- (a) Canterbury Earthquake (Resource Management Act) Order 2010. This (amongst other things) –
 - relaxes certain administrative and other duties;
 - modifies certain statutory requirements to better apply those requirements to the particular circumstances arising from the Canterbury earthquake;
 - provides immunity from prosecution for the affected local authorities that permit a contravention of the Act, where that omission is reasonably necessary for the purpose of the Canterbury Earthquake Response and Recovery Act 2010.
 - (b) Canterbury Earthquake (Local Government Act 2002) Order 2010. This (amongst other things) –
 - exempts the Council from certain provisions of the Act with regard to decision making and consultation;
 - does not prevent the Council from doing anything inconsistent with its Annual Plan or LTCCP;
 - applies only to the extent that a decision is, directly or indirectly, necessary or desirable to further one or more of the purposes of the Canterbury Earthquake Response and Recovery Act 2010.
10. Section 19 of the Canterbury Response and Recovery Act 2010 protects those who make decisions under an Order in Council against liability for anything done in good faith.
11. The process and procedures outlined in this report comply with the Council's obligations with regard to the relevant provisions of the Act and Orders in Council.

STAFF RECOMMENDATION

It is recommended that the Council resolves that:

- (a) It adopts the proposal that collaborative working relationships be developed with contractors engaged to manage the re-instatement of infrastructure damaged in the 4 September earthquake in four of the worst affected areas in Christchurch – Halswell, South Shore/Bexley, Brooklands/Kainga and Avonside/Burwood/Dallington.
- (b) The Chief Executive is authorised to enter into and approve such agreements and arrangements as are necessary to implement the proposal. Subject to the proposal being approved by the Local Authority Protection Programme (LAPP), agreements will be entered into with the following companies:
 - City Care (Halswell)
 - Downer NZ (Brooklands, Kainga)
 - Fulton Hogan (South Shore, Bexley)
 - McConnell Dowell/Fletcher Construction (Avonside, Burwood, Dallington)
- (c) The Chief Executive is to report regularly to the Council on progress with regard to the reinstatement work.
- (d) The Chief Executive is to exercise his authority in accordance with the relevant provisions of the Canterbury Earthquake Response and Recovery Act 2010 and Orders in Council.

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BACKGROUND

12. The 4 September earthquake resulted in substantial damage to infrastructure in Christchurch, particularly in Halswell, South Shore/Bexley, Brooklands/Kainga and Avonside/Burwood/Dallington.
13. In considering how to procure the work required to reinstate this infrastructure Council staff have considered the strategic context within which it is to occur. This has resulted in identifying the following strategic objectives:
 - (a) deploying contractors in the community in the shortest possible time-frame. The aim of this is to give confidence to those affected that there will be no delay in the reinstatement of infrastructure;
 - (b) procuring sufficient resource to ensure that these objectives are met;
 - (c) utilising the local contracting market to its maximum extent, with fair reward for contractor performance;
 - (d) co-ordinating work and resources with other affected local authorities so that any conflict of priorities is avoided;
 - (e) using effective contract and relationship management practices to successfully manage quality, cost and overall performance of contractors so that the Council receives value for money.
14. Council staff have settled on a delivery model centred on the four specified geographic areas referred to above. These require an extensive and immediate reinstatement of infrastructure. The remaining works outside of these four geographic areas will be delivered using standard Council business practices commensurate with the urgency of the work.
15. The Council intends to appoint head contractors to lead collaborative teams (including Council staff) undertaking all work, including design and construction, within a specified area. It is expected that the teams will work closely with Council staff to understand the issues and find appropriate solutions in each area.
16. The scope of the services provided by each head contractor will include (but not exclusively):
 - (a) development of a work programme;
 - (b) communications and public liaison;
 - (c) design and the consideration of options where relevant;
 - (d) liaison with service utility providers;
 - (e) managing procurement and logistics;
 - (f) construction;
 - (g) reporting (project control groups and public meetings).
17. Under this arrangement, each head contractor will form a team of appropriately experienced people to manage the co-ordination of all works in the specified area. Each team will include representatives of the Council, designers and sub-contractors. This is a collaborative approach in which the Council will have significant input.
18. It will also allow the head contractor sufficient flexibility to work with other agencies in the area. These could include, for example, land remediation and building repair work carried out by the Earthquake Commission (EQC).

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19. Although each head contractor will undertake some of the physical works required it is anticipated that a significant portion will be delivered using sub-contractors in a way that is consistent with the Council's objectives. For its part, the Council will have a co-ordination/overview role that will provide a reporting path, resource management, dispute resolution and co-ordination across the city and wider region.
20. The estimated value of the works to be undertaken in each area is approximately:
 - (a) Halswell \$20 million
 - (b) South Shore/Bexley \$40 million
 - (c) Brooklands/Kaingā \$40 million
 - (d) Avonside/ Burwood/Dallington \$190 million
21. As indicated, these estimates are approximate only and will be subject to change as condition assessments are completed and repair or replace methods are confirmed.
22. The scope of the reinstatement works to be completed in each area includes:
 - (a) wastewater pipes;
 - (b) inspection and repair of laterals from sewer main to private gully traps (subject to agreement from EQC);
 - (c) water mains and sub-mains;
 - (d) stormwater pipes;
 - (e) road corridors including road reinstatement, footpaths and lighting if required;
 - (f) other works that are sensible to integrate into a phased reconstruction;
 - (g) obtaining all consents required to support construction and design work. The Canterbury Earthquake Response and Recovery Act 2010 and associated Orders in Council enable consents to be obtained in parallel to construction works;
 - (h) safety, quality, cost management and reporting.
23. Some of the re-instatement will depend on the timing of land re-mediation works being considered by the EQC. However there is a significant balance that can be undertaken independently of EQC's proposals.
24. The direct appointment of head contractors to each of the four areas referred to above is seen by staff as being the best way to achieve delivery of the work required. It is their view that adopting an open competitive tender process would reduce value for money for the following reasons:
 - (a) delays in commencing work and providing certainty to the community and contractors market would undermine the Council's strategic objectives;
 - (b) the likelihood of unpredictable pricing responses due to the current state of the market and the uncertainty of specific scopes of work within each identified area;
 - (c) the Council has a strong preference to use contractors with local experience working on the city infrastructure network and working collaboratively with the Council and other stakeholders;
 - (d) council staff believe that a collaborative approach to negotiating contract terms and prices with contractors will result in the best outcome, the building of positive relationships and a pricing and contract model that is fit for purpose.

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25. Registrations of interest were therefore sought from a short list of four companies. It was considered that each has the capacity and capability to act as a head contractor and to lead a collaborative team. In particular they were seen as having:
- (a) critical project and construction management capability sufficient to manage contract works of this size;
 - (b) a clear understanding of the Council's design and construction standard;
 - (c) sound experience working in Canterbury;
 - (d) a good understanding of the city's infrastructure;
 - (e) a proven track record working on Council projects;
 - (f) access to national resources;
 - (g) strong quality and health and safety systems;
 - (h) strong sub-contractor management systems.
26. The four companies were asked to submit information about their relevant experience, track record, resources, engineering systems and structures for delivering the work required. These submissions have been evaluated by staff to confirm that the companies had the capability and capacity to perform the role of head contractor, and to rank them from highest to lowest in terms of overall quality.
27. Staff then assessed each of the four areas and ranked them again from highest to lowest in terms of overall complexity. The most complex area was then matched with the highest quality head contractor and so on.
28. The four contractors and the area they have been matched to are:
- (a) City Care (Halswell);
 - (b) Downer NZ (Brooklands/Kaingā);
 - (c) Fulton Hogan (South Shore/Bexley);
 - (d) McConnell Dowell/ Fletcher Construction (Avonside/Burwood/Dallington).
29. One of the core services of the management agreement to be entered into with each head contractor will be to define packages of work which will then either be:
- (a) negotiated with and performed by the head contractor; or
 - (b) negotiated with and managed by the head contractor, but performed by sub-contractors;
or
 - (c) competitively priced by selected sub-contractors and awarded accordingly; or
 - (d) competitively priced by the open market; or
30. Whether or not delivery is undertaken by the head contractor or sub-contractors that it engages for that purpose is for the head contractor to determine. Council staff will work with the head contractors to develop a procurement strategy for performance of the works.

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31. It is expected that the work packages will support the Council's strategic objectives and achieve value for money by:
 - (a) containing clear performance criteria;
 - (b) using a transparent pricing model;
 - (c) comparing sub-contract prices with recent competitively priced rates for similar works;
 - (d) the make up of rates being the subject of an independent external audit where appropriate.
32. The cost of re-instatement work will be met by a combination of subsidies available from the New Zealand Transport Agency (NZTA), proceeds or claims lodged against LAPP and the Council. The proposal has been approved by NZTA and is in the process of being approved by LAPP.
33. The Council's probity advisor for this process is Michael Weatherall of Simpson Grierson. His role will be to approve and provide probity sign off for the Council's proposed procurement process and at various points of the project. Staff are also using an independent expert to audit the relevant pricing models.