

18. 7. 2011

## 6. BURWOOD RESOURCE RECOVERY PARK ORDER IN COUNCIL

<b>General Manager responsible:</b>	General Manager Corporate Services, DDI 941- 8528
<b>Officer responsible:</b>	Manager Legal Services Unit
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### PURPOSE OF REPORT

1. The purpose of this report is provide information on the progress of an Order in Council for the Burwood Resource Recovery Park.

### EXECUTIVE SUMMARY

2. At the Council meeting of 31 March 2011, officers described the directive by the Civil Defence National Controller to take demolition material to Bottle Lake Forest Park, and the benefits for Council and community if the Burwood Resource Recovery Park continues to operate at that location for storing, sorting, processing and removing demolition waste, and for disposal of liquefaction silt.
3. There is a pressing need to clear building sites as soon as possible, particularly within the central business district, so that people and businesses can re-occupy neighbouring buildings and so that re-building can commence.
4. In managing the waste generated by the Christchurch earthquake, the following outcomes are sought:
  - Protection of public and worker health and safety
  - Rapid and affordable recovery of Christchurch
  - Avoidance and mitigation of the harmful effects of waste
  - Efficient use of resources
  - Sensitivity in the handling of buildings where fatalities have occurred
  - Identification and protection of heritage materials
  - Transparent and equitable processes
5. Council staff have identified one suitable site within Christchurch city that can be used immediately: Bottle Lake Forest Park in Burwood.
6. The purpose of Burwood Resource Recovery Park is to enable building and construction material to be removed as soon as possible from demolition sites and then sorted, processed and recycled over a longer time period. The facilities are being used for the temporary storage of demolition material while it is sorted and uses found for it, rather than as a permanent disposal site.
7. Council resolutions on 31 March 2011 addressed three aspects of operational issues for the Burwood Resource Recovery Park:
  - (a) Compliance with the Reserves Act 1977;
  - (b) Resolution of land tenure issues;
  - (c) Compliance with the Resource Management Act.
8. The Reserves Act issues have been partly resolved by the Canterbury Earthquake (Reserves Legislation) Order 2011. The land affected by the Burwood Resource Recovery Park is a reserve as defined in that Order. That Reserves Act Order allows a Council to use a reserve for any use that the Chief Executive of the Council considers necessary to respond in a timely manner to any circumstances arising from the Canterbury earthquake.
9. That Reserves Act Order expires on 31 March 2012. Cabinet will need to extend the expiry date. Central government officials recognise this and have started consultation on an amended Order.

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10. Council officers are preparing a licence for the operator of the Resource Recovery Park to occupy the reserve. No tenure issues arise regarding the existing licences to the Selwyn Plantation Board, as the Reserves Act Order provides that the Council's use of the reserve for earthquake recovery purposes override the existing licence.
11. The resolution on 31 March 2011 relevant to resource management issues was that the Council:
  - (b) *Delegate authority to the General Manager Corporate Services to take all steps that he considers necessary to continue the operation of the Burwood Resource Recovery Park, including (but not limited to):*
    - (i) *Promoting and recommending to the Council appropriate Order-in-Council in relation to the Resource Management Act 1991, the Reserves Act 1977, the Public Works Act 1981, or any other statute, under the Canterbury Earthquake Response and Recovery Act 2010 containing such provisions and powers as he shall consider necessary;*
12. Officers of the Ministry for the Environment are currently acting on directions from Cabinet to prepare an Order in Council for Cabinet approval. The Ministry for the Environment is driving this legislative process. In preparing a draft Order, they are limited by the scope of policy approval given by Cabinet.
13. The Ministry obtained a special waiver from the Attorney-General to enable draft versions of the Order to be shared with officers of the Christchurch City Council, Environment Canterbury, and Burwood Resource Recovery Park Limited. This is not a requirement when an Order in Council is being considered. Ministry officers have reinforced that although they do try to consult with local government, making regulations is ultimately a central government process. The Ministry is supplying these copies under an obligation of confidentiality.
14. Officers consider that consultation with the Ministry for the Environment on the draft Order in Council is proceeding well.
15. Central government requires that the proposed timeframe for, and draft content of, the Order in Council remain confidential until it has been approved by Cabinet. Accordingly, that information is contained in the Public Excluded agenda for this meeting.

**FINANCIAL IMPLICATIONS**

16. If there is no streamlined resource consent process for the Burwood Resource Recovery Park, the consenting costs will be significantly greater. The delays that it will create before Burwood Resource Recovery Limited can commence processing may threaten the viability of that operation, which could have a significant flow-on cost for the Council and community.

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

17. Yes.

**LEGAL CONSIDERATIONS**

18. The recommendation in this report gives effect to the Council resolution on 31 March directing the General Manager Corporate Services to take such steps as necessary to continue the operation of the Burwood Resource Recovery Park.
19. So far as the decision-making requirements of in the Local Government Act 2002 are concerned, the Canterbury Earthquake (Local Government Act 2002) Order 2010 is relevant. The Order states that the Council is exempt from a number of those requirements 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.

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20. This exemption includes the requirement in section 78 of the Local Government Act 2002 to consider the views and preferences of persons likely to be affected by, or who have an interest in, the decision.
21. The use of the land is necessary to assist with the response to the Canterbury Earthquake (including the aftershock on 22 February 2011). It therefore falls within the purposes of the Canterbury Earthquake Recovery Act 2011 and the Council is entitled to rely on the exemptions allowed by the Canterbury Earthquake (Local Government Act 2002) Order.
22. The directive by the National Controller for demolition waste to be stored at Burwood continued in force until 12 July 2011 by operation of section 85 of the Canterbury Earthquake Recovery Act 2011. On 9 July 2011, Environment Canterbury and the Christchurch City Council both published public notices permitting continued temporary storage of demolition waste at Burwood under the Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011. However, the scope of that Permitted Activities Order in Council does not enable processing of demolition waste. Processing is integral to the operation of the Burwood Resource Recovery Park. The operators intend to start that processing at the earliest opportunity. The proposed Burwood Resource Recovery Park Order in Council will streamline the resource consent process for that activity.

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

23. Yes, see above.

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24. Yes, see above.

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

25. No – extraordinary circumstances arise from the earthquake.

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

26. No – extraordinary circumstances arise from the earthquake.

**ALIGNMENT WITH STRATEGIES**

27. One of the purposes of enabling the Burwood Resource Recovery Park is to assist in achieving the CCC Waste Plan and the Ministry for the Environment Waste Strategy with regard to minimising waste to landfill.

**CONSULTATION FULFILMENT**

28. The matter of consultation has been dealt with in the legal considerations section of this report.

**STAFF RECOMMENDATION**

It is recommended that the Council resolves to approve the General Manager Corporate Services continuing to promote an appropriate Order in Council for the Burwood Resource Recovery Park.