



7 July 2011

Sir John Hansen  
Convenor  
Canterbury Earthquake Recovery Review Panel  
c/- Canterbury Earthquake Recovery Authority  
Private Bag 4999  
**CHRISTCHURCH 8140**

Dear Sir John

**Canterbury Earthquake (Resource Management Act Burwood  
Resource Recovery Park) Order 2011**

**Proposal**

1. The Canterbury Earthquake Recovery Review Panel is asked to consider a proposal for an Order in Council (the Order) that will provide a streamlined consent process under the Resource Management Act (RMA) for resource consents required for the temporary storage, sorting and processing of earthquake waste at Burwood Resource Recovery Park (BRRP).
2. The Order provides for the resource consents to be classified as a controlled activity under the RMA and specifies the matters over which control is retained. The Order also requires that any change of consent conditions would follow the streamlined process but would be classified as discretionary activities.
3. The effect of the Order will be that there will be no public notification of the applications, submission process, public hearing or rights of appeal to the Environment Court, except on the part of the applicant. Instead the Order will require the consent authorities to invite written comments from persons or organisations adversely affected and will give at least ten working days for comments.
4. It is proposed that the Order provides for councils to extend the timeframes under section 37 of the RMA but only if the applicant is in agreement. The Order also removes the ability for persons (other than councils in Canterbury and the Crown) to take enforcement action.

5. A final draft of the proposed Order is attached as Appendix One to this letter and a map indicating the location of the Burwood Resource Recovery Park is attached as Appendix Two.

## **Background**

6. Following the 22 February 2011 aftershock, BRRP was established at Bottle Lake Forest Park Reserve and the closed Burwood landfill site to manage the receipt and processing of demolition material from the Canterbury earthquakes. While the BRRP provides for temporary storage and future processing of earthquake waste, the Kate Valley Landfill is able to receive the waste material for permanent disposal if the material cannot be recycled or permanently disposed of as part of the Port reclamation.
7. BRRP Ltd advised the Ministry for the Environment that resource consents are required from Christchurch City Council and Environment Canterbury to enable the continued temporary storage and future processing of earthquake waste and that the timeframes for notified resource consent applications and potential appeals are likely to be a source of delay.
8. The expedited resource consent process for temporary storage, sorting and processing of waste at BRRP, is consistent with the purposes of the Canterbury Earthquake Recovery Act 2011 in respect to:
  - a. Section 3(a): to provide appropriate measures to ensure that greater Christchurch and the councils and their communities respond to, and recover from, the impacts of the Canterbury earthquakes
  - b. Section 3(d): to enable a focussed, timely, and expedited recovery
  - c. Section 3(f): to facilitate, coordinate and direct the planning, rebuilding and recovery of affected communities, including the repair and rebuilding of land, infrastructure, and other property
  - d. Section 3(g): to restore the social, economic, cultural and environmental well-being of greater Christchurch communities.

## **Policy Objective**

9. The policy objective to be achieved through the Order is to ensure that RMA resource consent processes do not present undue delays or costs, which are associated with notification, hearing and appeal processes. Delays for BRRP Ltd in the resource consent process could result in disruption to the storage of waste and delay the future processing of waste at the facility. This would slow down the removal of waste from the CBD and the rebuilding of the city, impeding the utilisation of existing

resources, reducing efficiency and raising the costs of Canterbury's earthquake repair and recovery.

10. Under the RMA the future processing of waste at BRRP would require resource consent applications to be lodged with Environment Canterbury and Christchurch City Council. The provisions of the RMA and the district and regional plans are likely to require any resource consent applications to be publicly notified.
11. Notified resource consent applications provide the opportunity for the public to make submissions, but as a result, take significantly longer to process than non-notified applications. Any person can make a submission on a publicly notified application and at least twenty working days must be given for the submission period. Notified applications take a minimum of two to three months to process, but generally in excess of six months for more complex proposals. Publicly notified consents are also significantly more costly than non-notified consents.
12. Another main source of delay is the potential appeal process available to submitters following a decision, which can take anywhere between six months to a year or more to resolve.
13. Overall, it is considered that the notified resource consent and appeal process has significant potential to cause undue time delays to the operation of BRRP. Delays in the consent process could result in disruption to the storage of waste and delay the future processing of waste at the facility. This would slow down the removal of waste from the CBD and the rebuilding of the city. It would impede the utilisation of existing resources, reducing the efficiency and raising the costs of repair and recovery.

## **Timing**

14. It is proposed that the Order in Council will come into force the day after it is notified in the *Gazette*. This will enable the applicant to apply for resource consents as soon as possible under the streamlined consent process provided for in the Order.

## **Preferred Option**

15. The status quo option, that of following normal RMA consenting processes, is not preferred as it imposing costs and delays of such magnitude that it will not achieve the policy objective.
16. In addition to the status quo option four options were considered:

*Option One: An Order which provides for the resource consents for the BRRP to be processed on a non-notified, controlled*

*activity basis, with a limited level of consultation (the preferred option).*

17. Option One is preferred as it provides certainty for BRRP Ltd and the wider Canterbury community that recycling of waste can occur without delay, while retaining the responsibility for managing adverse environmental effects with local government.
18. The absence of a public submission and hearing process reduces the administration and consultative burden on BBRP Ltd and councils, which saves time and reduces costs. The absence of a hearing and appeal process also increases certainty for BBRP Ltd that permission to carry out waste activities cannot be overturned.

*Option Two: An Order which provides for the resource consents for the BRRP to be processed on a non-notified basis, with a limited level of consultation and on a discretionary or non-complying activity basis, as set out in the relevant plan.*

19. This option does not provide sufficient certainty that the consent would be granted. There is a risk that the applications for land use activities, which are described as non-complying activities, would have to be turned down, if the effects were more than minor and the activity was contrary to the objectives and policies in the plan.

*Option Three: An Order which provides for the resource consents for the BRRP to be processed on a non-notified, controlled activity basis, with no consultation.*

20. Option Three is not supported as it does not provide for public participation which is a key means by which councils identify adverse effects arising from an activity and negotiate with the community acceptable ways of managing these effects. Removing all forms of public participation means adversely affected persons will not get an opportunity to have a say in the activities that impact on them. Removing all public participation also heightens the risk of a judicial review, which can significantly impact on the time and cost of obtaining resource consents.

*Option Four: An Order which provides for the BRRP to be a permitted activity with performance standards drafted by Central Government in liaison with Environment Canterbury and Christchurch City Council.*

21. This option would result in an overly complex and drawn out process for preparing the Order, and would offer less flexibility for BBRP Ltd and councils to negotiate a mutually acceptable set of conditions. Persons severely affected by the application would not get an opportunity to be part of a resource consent process as there would be no requirement to consult with affected parties. This could increase the risk of judicial review.

## **Costs and Benefits – Preferred Option**

### *Benefits*

22. A controlled activity status would provide greater certainty for the BRRP Ltd as it removes any doubt about whether an application would be granted consent. The applicant will be able to purchase the necessary plant for the processing of waste with greater certainty and less delay.
23. A non-notified controlled activity status will provide for a prompt resource consent process for BRRP Ltd. A non-notified process will reduce administrative delays associated with notification and lengthy notified hearing processes under the RMA.
24. Requiring Christchurch City Council and Environment Canterbury to seek specified affected party feedback promotes well informed decision making. It provides an opportunity for adversely affected parties to have a say and have their views considered before a decision on conditions is made.
25. Consultation will assist Christchurch City Council and Environment Canterbury in the development of appropriate and robust conditions, and in ensuring these conditions appropriately avoid, remedy or mitigate adverse effects on the environment.
26. There will be no objections or appeals to the Environment Court, except by the applicant, thus reducing cost and potential delays.

### *Costs/limitations*

27. The discretion for Christchurch City Council and Environment Canterbury to decline the resource consent application is removed.
28. Reducing the opportunity for public involvement could prevent the correction of factual or legal errors. If adverse effects subsequently prove to be more widespread or severe than expected this could be an issue. The risk of Christchurch City Council and Environment Canterbury failing to identify all adverse effects is mitigated by the requirement for consent authority's to consult with affected parties.
29. Affected parties are not asked to give their written approvals, rather to provide comments. Whilst their concerns can be taken into account in the decision making process their only right to challenge the conditions is through a judicial review (restricting them to challenges on points of law).
30. Judicial reviews of decisions can significantly impact on the time and cost of obtaining resource consent. Should any judicial review arise, this will be an additional expense. The risk of judicial review can be reduced by specified affected parties having the opportunity to comment.

## **Other relevant matters**

31. Earthquake waste has been received and stockpiled at BRRP since 7 March 2011 under the direction of the National Controller during the state of emergency. BRRP is able to continue to receive earthquake waste by virtue of section 85(2) of the CER Act, which provides for the direction to continue to have effect for a period of twelve weeks after the commencement of the CER Act. This period ends 12 July 2011. New authorisation for storage of earthquake waste is required.
32. It will take approximately 30 working days to process resource consents under the streamlined process once the Order is gazetted on 21 July 2011. A public notice under the Canterbury Earthquake (Resource Management Act – Permitted Activities) Order 2011 will provide for temporary storage of waste to continue until consents are granted. However, any preliminary sorting or future processing of waste can only begin once the necessary resource consents are granted.

## **Risks**

33. The proposed Order will have an impact on the principles of natural justice by removing the statutory rights for hearings and appeals. The applicant and Councils will have the responsibility for identifying and addressing all adverse effects of the waste activities as the Order will remove submission and appeals rights of affected parties. To ensure some legal checks and balances remain the ability to seek judicial review is retained.
34. A reduction in public participation can reduce the quality of information available to guide the setting of appropriate resource consent conditions. This risk is mitigated by the Order providing an opportunity for input from affected parties and requiring these parties to be invited to comment by way of letter, as a public notice can be over looked. The Order will improve certainty for the Councils and the community by listing the parties that must be invited to comment. A catch all has also been provided for the local authority to seek comment from other affected parties.

## **Consultation**

35. The following departments have been consulted: Canterbury Earthquake Recovery Authority, Department of Building and Housing, Department of Conservation, Department of Internal Affairs, Land Information New Zealand, Ministry of Agriculture and Forestry, Ministry of Economic Development, Ministry of Health, Ministry of Justice, Ministry of Transport, Ministry of Culture and Heritage, Te Puni Kokiri, and Treasury. The Department of Prime Minister and Cabinet has been informed.

36. Both Environment Canterbury and Christchurch City Council have been consulted in the preparation of the Order. BRRP Ltd have also been involved in the development of the proposed Order and are supportive of the recommended approach.

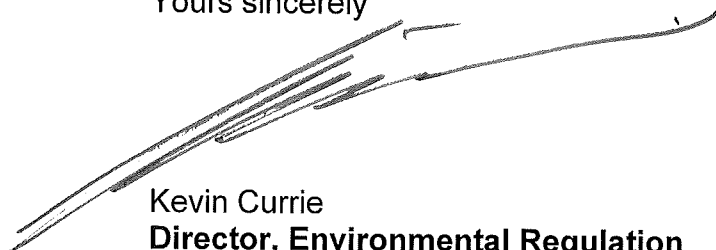
### **Profile of draft OIC and proposed publicity**

37. The Order will be published in the *Gazette*. Any publicity around the Order will be undertaken as part of the wider communication strategy for the Canterbury Earthquake. These arrangements include engagement with the Canterbury Earthquake Recovery Authority, BRRP Ltd, councils and other key stakeholders, as well as media announcements.

### **Conclusion**

38. We look forward to receiving your recommendations so that regard can be had to them before the Minister makes a recommendation on the draft Order. The key contact for this item of work is Alice Blackwell ([alice.blackwell@mfe.govt.nz](mailto:alice.blackwell@mfe.govt.nz))

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kevin Currie', written over a series of horizontal lines that serve as a guide for the signature's length and placement.

Kevin Currie  
**Director, Environmental Regulation**  
**Ministry for the Environment**