

## Regulatory Impact Statement

### Options for Expediting RMA Consent Application processes for the operation of the Burwood Resource Recovery Park under the Canterbury Earthquake Recovery Act 2011

#### Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry for the Environment (MfE). It provides an analysis of four Order in Council (OIC) options for a streamlined resource consent process for the temporary storage and processing demolition material at the Burwood Resource Recovery Park (BRRP). The temporary storage and processing of demolition material is required to aid the recovery of greater Christchurch following the Canterbury Earthquake of 4 September 2010 and aftershock of 22 February 2011.

Christchurch City Council, Environment Canterbury and Burwood Resource Recovery Park Limited (BRRP Ltd) have provided the majority of the information relating to the proposed OIC. This RIS has been developed in the absence of information and data relating to wider waste disposal issues in greater Christchurch area as a result of the Canterbury earthquake events. However, given the urgency and sheer volume of demolition material in need of temporary storage and processing, delaying policy approval to allow more time for this information to feed into the RIS would have implications that are neither desirable nor practical.

The preferred option is for an OIC to provide for the temporary storage and processing of demolition material under the Resource Management Act 1991 (RMA) as a non-notified controlled activity resource consent with consultation with specified affected parties and no hearing or appeal rights. Fundamental common law principles around access to the Courts is retained for all parties through the judicial review process, despite written approval requirements, notification, objection and general appeal rights under the RMA being restricted.

It is difficult to speculate on either the nature or scale of any risk of judicial review. If there is a challenge of any sort the court may preserve the status quo until the matter is resolved. How long this would take would depend on the nature of the challenge. Alternately a court may find that Parliament has made this legislation and that decisions have been made in accordance with the rule of law in this country. There is no way of pre-determining how an application for judicial review would be considered, or resolved, before it is made.

The policy options proposed will not impose additional costs on businesses, are unlikely to impair market competition, or impair incentives on businesses to innovate or invest.

Kevin Currie, Director – Environmental Protection

Date

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## 1.0 Status Quo and Problem Definition

### *Context*

- 1.1 The Canterbury earthquakes, and in particular the 22 February aftershock, have resulted in the need for the demolition and repair of a large number of buildings in Christchurch, Waimakariri and Selwyn districts. This has resulted in substantial quantities of demolition material needing to be removed, stored, recycled and disposed of within the Canterbury region.
- 1.2 It is estimated that approximately 8.5 million tonnes of material will come from buildings in the Christchurch City central business district, Christchurch City homes, damaged infrastructure and from silt and sand. Additional material will also be created from urban commercial areas and homes in Kaiapoi. This amount of material is significant in comparison to the approximately 250,000 tonnes of waste annually disposed of at the Kate Valley landfill.
- 1.3 The removal of demolition material is being given urgent priority by central and local government to minimise costs and disruptions to Canterbury's recovery.
- 1.4 Normally demolition material would be salvaged on site, however, this can double the time to demolish a building and clear the site. For this reason demolition material will also need to be removed and sorted off site in some instances. Christchurch City Council has sought the assistance of Government to expedite RMA consent processes for the operation of BRRP to store and sort demolition material.

### *Burwood Resource Recovery Park - Background*

- 1.5 Following the 22 February aftershock, the BRRP was established at Bottle Lake Forest Park to manage the receipt, storage and resource recovery processing of demolition material from the Canterbury earthquakes. The map in Appendix One identifies the exclusion zone within which BRRP is located<sup>1</sup>.
- 1.6 BRRP Ltd, is wholly owned by Transpacific Industries Group NZ Ltd and is a partnership between EcoCentral Ltd (wholly owned by Christchurch City Council's holding company) Christchurch Recovery and Recycling Ltd and Transpacific.
- 1.7 Waste has been received, stored and sorted at BRRP since 7 March 2011, however, resource recovery processing has not yet begun. Before processing of demolition material can begin, BRRP Ltd must purchase plant and machinery as well as obtain the necessary resource consents.
- 1.8 Bottle Lake Forest Park is a reserve owned by the Christchurch City Council and is in the process of being leased to BRRP Ltd for a five year period. The Canterbury Earthquake (Reserves Legislation) Order 2011 enables the Christchurch City Council to use a reserve for any purpose necessary to respond in a timely manner to any circumstances arising from the earthquakes.

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<sup>1</sup> Note that BRRP occupies a smaller area within the exclusion zone.

- 1.9 The Christchurch City Council has requested that there is an extension to the Canterbury Earthquake (Reserves Legislation) Order as it expires on the 31 March 2012. This matter is being addressed by the Department of Conservation and is outside of the scope of the Order addressed in this RIS, as it addresses all reserves in general, rather than being specific to BRRP.
- 1.10 The Ngai Tahu Claims Settlement Act 1998 treats a lease of 50 years or longer as a disposal of land and requires Ngai Tahu Trust Board to have the first right of refusal to acquire the land. As the lease proposed for Bottle Lake Forest Park is only for five years this requirement is not triggered.
- 1.11 In the first two months following the earthquake approximately 100,000 tonnes of demolition material was stored at the BRRP. Over the life of BRRP it is possible for two to four million tonnes of demolition material to be processed. However the initial development of the site, including plant, is for the processing of up to two million tonnes. Processing demolition material will minimise waste to landfill and achieve the maximum recovery of useful resources in the rebuild of Christchurch.
- 1.12 A streamlined resource consent process will enable the BRRP Ltd to have greater certainty when purchasing and constructing the plant required to process demolition material and will enable the processing of waste to begin sooner than if standard resource consent processes applied. This will lead to a timelier implementation of the waste recovery process, enabling residents and businesses in greater Christchurch to get on with rebuilding, and recovering from, the Canterbury earthquakes.

#### ***Decisions already taken and regulatory powers available***

- 1.13 Following the Canterbury Earthquake events, approximately twenty existing and new facilities have been identified to receive demolition materials. These facilities include recycling and transfer depots, quarries, a reclamation at Port Lyttelton and a landfill at Kate Valley. The Kate Valley Landfill has capacity to take waste suitable for landfill, however, there is a need for additional capacity to store, sort and recycle demolition material.
- 1.14 In the immediate aftermath of the 22 February earthquake, the National Controller authorised the storage of demolition material and silt at the Bottle Lake Forest Park and the old Burwood landfill (together these form BRRP). Demolition material and silt has been received and stockpiled under this direction since 7 March 2011. This authorisation expires on 12 July 2011.
- 1.15 The Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011 (Permitted Activities Order) enables the establishment of temporary facilities for the storage of debris and waste materials. The Permitted Activities Order requires the relevant local authority to issue a public notice specifying the location of the activity and standards the facility must comply with.
- 1.16 On 9 April 2011, the Christchurch City Council issued a public notice authorising the storage of debris and waste materials at the closed Burwood Landfill. This activity is able to continue for the duration of the Order (which expires after five years in April 2016). The public notice does not provide for the storage of debris and waste materials in the Bottle Lake Forest Park. Permitting the storage of debris and waste materials in the Bottle Lake Forest Park would require the issuing of a further public notice from either Christchurch City Council or Environment Canterbury. However, the Permitted

Activities Order does not allow for the sorting or further processing of demolition material, at either the old Burwood landfill or at Bottle Lake Forest Park.

- 1.17 Resource consents are required for the temporary storage of debris and waste materials within the Bottle Lake Forrest Park and for the processing of waste within the entire BRRP (i.e. including at the closed Burwood Landfill).
- 1.18 In response to the exceptional circumstances associated with the Canterbury Earthquake, Parliament passed the Canterbury Earthquake Response and Recovery Act 2010, which has recently been repealed by the Canterbury Earthquake Recovery Act 2011 (CER Act). The CER Act puts in place relevant tools which among other things can be used to speed up the resource consent process under the RMA. These tools are:
- Ministerial direction and powers – the Minister for Canterbury Earthquake Recovery can suspend, amend or revoke all parts of the RMA plans. The anticipated use of these powers is for emergencies, and as a matter of last resort and for matters with a high level of urgency.
  - Orders in Council (OIC) – the Minister for the Environment can make any provision and can amend, modify or extend the RMA, for a range of purposes. The anticipated use of these powers is only where necessary, and for matters with a medium to high level of urgency.
  - Recovery Plan – the Minister for Canterbury Earthquake Recovery can direct that a recovery plan is prepared to change or require changes to be made to RMA plans. The anticipated use of these powers is for matters with less urgency.

### ***Status Quo***

- 1.19 Resource consents are required under the RMA when the environmental effects of a proposed activity cannot meet the standards of the relevant district or regional plan. The scale of the environmental effects generated by a proposal determine whether a local authority would require a resource consent to be non-notified, limited notified (where only those affected persons who are notified can make a submission) or publicly notified (anyone can make a submission). Different timeframes are set under the RMA according to the type of notification process that must be followed.
- 1.20 Under normal RMA processes any new resource consent applications, such as for the activities at BRRP, would require resource consent applications to both Environment Canterbury and the Christchurch City Council. Depending on the provisions of the relevant regional and district plan and the significance of the proposal's environmental effects, a consent application would either be processed non-notified, limited notified or publicly notified.
- 1.21 The temporary storage and processing of demolition and construction material at BRRP requires resource consent from Christchurch City Council as a non-complying activity, and from Environment Canterbury as a discretionary activity. In usual circumstances, the local authorities concerned would decide if there are any affected parties, or if the general public should be notified, and decide if the proposal should be approved.
- 1.22 The activities at BRRP will result in potential effects on the environment, such as noise, dust and odour emissions, visual effects and traffic impacts, as well as a loss of access

for recreational users to the Bottle Lake Forest Park. The proposal will also result in potential effects on stormwater and groundwater systems. These effects and the impact on any affected parties would need to be considered under normal RMA processes. Affected parties would likely include surrounding residential property owners and occupiers, parties that live and work along the main transport routes into the site and users of Bottle Lake Forest Park.

- 1.23 If an application for the waste sorting and processing activities at BRRP was received in normal circumstances then it is likely it would be publicly notified. If any submissions were made and those making the submission wished to be heard, then a hearing would be required. In the case of existing and proposed activities at BRRP, it would appear that a hearing would be likely.

## 2.0 Problem Definition

### *Problem Statement*

- 2.1 A large volume of demolition and construction material as a result of the Canterbury Earthquakes needs to be temporarily stored and processed. The temporary storage of waste at BRRP is authorised under emergency powers in the RMA and CER Act, but this authorisation expires on 12 July 2011. The current public notice issued by the Christchurch City Council under the Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011 for the storage of debris and waste materials at the closed Burwood Landfill only provides a partial stopgap. This is because the public notice permits storage of debris and waste materials at only the closed Burwood Landfill and it cannot provide for the sorting and further processing of waste.
- 2.2 The existing District and Regional Plan does not anticipate a waste processing facility at BRRP and the RMA framework does not provide a process for the required resource consents in the timeframe required especially given the likelihood of public notification.
- 2.3 It is imperative to greater Christchurch's recovery that the temporary storage and processing of demolition material is authorised in a timely manner. This will not only assist greater Christchurch in recovering from the Canterbury Earthquakes without delay, but also in using valuable resources in demolition material in the recovery operation.

### *Problem timeframes*

- 2.4 Timeframes prescribed for processing resource consents as set out in the RMA and associated Resource Management (Discount on Administrative Charges) Regulations 2010 are as follows:

<b>Application Process</b>	<b>Working days</b>
Non-notified (no hearing)	20
Publicly or limited notified (no hearing)	50
Publicly or limited notified (hearing and no pre-circulation of evidence)	70
Publicly or limited notified (hearing with pre-circulation of evidence)	85

- 2.5 However, in reality the timeframes can be much longer than this. The timeframes listed above do not take into account periods where local authorities are waiting on further information requested from consent applicants, or the time associated with hearing an application. Local authorities may also extend timeframes with the permission of applicants or where special circumstances apply. Including these additional timeframes means that the actual notified resource consent application process can take in excess of three months, and is more likely to take more than six months for complex applications.
- 2.6 The RMA enables the applicant, and any person who made a submission, the right to appeal the local authority decision to the Environment Court. Appeals, although not counted in the timeframes listed above, add the potential for further delays of six months to a year or more to resolve.
- 2.7 Information provided by Environment Canterbury on their average processing time for limited notified applications is 110 days, while for fully notified applications it is 384 working days for a decision to be issued.<sup>2</sup> Notified applications received by the Christchurch City Council take on average 70 working days. Both Environment Canterbury and the Christchurch City Council process non-notified resource consents in an average of 20 working days. These figures help to illustrate how significantly a non-notified, rather than notified, consent process could be for the timely processing of an application for BRRP.

### 3.0 Objectives

- 3.1 To provide a method to expedite resource consent application processes under the RMA for the temporary storage and processing of waste at the BRRP, that is consistent with the purpose of the CER Act to:
- ensure that RMA consent application processes do not present undue delays or costs to the temporary storage and processing of demolition material from the Canterbury Earthquakes at the BRRP.
  - aid in the restoration of the social, economic, cultural and environmental well-being of greater Christchurch.
- 3.2 The options proposed have been assessed against the following criteria. The first criterion, to minimise delay, has been given the highest weighting due to the need for the works to be undertaken urgently. The specific criteria are:
- minimise delay to the temporary storage and processing of debris and waste materials from resource consent processes
  - certainty of the granting of consent
  - ensure that local authorities can still require activities to be managed in such a way as to adequately avoid, remedy or mitigate adverse effects on the environment<sup>3</sup>

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<sup>2</sup> These are generally large scale water take related applications or applications of a similar complexity or public interest

<sup>3</sup> The definition of environment under the RMA includes people and communities

- where possible, preserve opportunities for public participation, under the RMA

## 4.0 Regulatory impact analysis

- 4.1 There are a number of tools available under the CER Act, including a ministerial direction, recovery plans and orders in council, to assist in the recovery and rebuilding of Christchurch.
- 4.2 The Minister for Canterbury Earthquake Recovery can suspend, amend or revoke all parts of the RMA plans or direct that the sorting and processing of waste at the BRRP is an authorised activity. A ministerial direction of this nature would ignore the provisions in the RMA and exclude the local authorities from managing the effects of the activity. It would also exclude any affected parties from providing written comment on the proposal. The ministerial powers in the CER Act are anticipated to only be used in emergencies, and as a matter of last resort.
- 4.3 The Minister for Canterbury Earthquake Recovery can direct a responsible entity to prepare a recovery plan on a site specific or wider geographic basis within greater Christchurch. A recovery plan could take several months or more to prepare, and must be notified and invite members of the public to make written comment. A recovery plan could be a useful tool in the strategic management of waste. However, given the urgency associated with authorising the processing of waste at BRRP, and given that work on a recovery plan has not yet been directed, it is not the appropriate tool in this instance.
- 4.4 To address the scale of the problem to be resolved, and the level of urgency required, an Order in Council is considered the most appropriate option and meets the purposes of the CER Act. An OIC can be progressed quickly, minimises potential delay to the commencement of processing waste, provides greater certainty for BRRP Ltd and benefits greater Christchurch's recovery.
- 4.5 Four approaches have been identified and assessed for possible inclusion in an OIC to expedite the resource consent application process. The four options for an OIC are:
- Option One:** (preferred option) An Order in Council 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.
- Option Two:** An Order in Council which provides for the resource consents for the BRRP to be processed as per existing activity status but non-notified and with a limited level of consultation.
- Option Three:** An Order in Council which provides for the resource consents for the BRRP to be processed on a non-notified, controlled activity basis, with no consultation.
- Option Four:** An Order in Council which provides for BRRP to be a permitted activity with performance standards drafted by Central Government in liaison with Environment Canterbury and Christchurch City Council.

Options for formulation of an OIC	Objectives			
	Minimise delay	Certainty that consent will be granted	Avoid, remedy or mitigate adverse effects on environment	Preserve opportunities for consultation
Option 1 Non-notified, controlled activity, with limited consultation	✓	✓	✓	✓
Option 2: Non-notified, existing activity status, with limited consultation	✓/X	X	✓	✓
Option 3: Non-notified, controlled activity basis, with no consultation	✓	✓	✓/X	X
Option 4: Permitted activity, with permitted activity standards	✓	✓	X	X

4.6 The following characteristics are common to all four options:

- there will be no opportunity for objections or appeals to the Environment Court
- there is no opportunity for any other person (other than the council) to take enforcement action

4.7 The following characteristics are only common to options one, two and three:

- an extension of the timeframes under section 37 can only occur with the agreement of the applicant
- the ability for judicial review is retained

***Option One: Non-notified, controlled activity, with limited consultation.***

4.8 Option One provides for all resource consent applications for BRRP to be processed as a controlled activity. The Christchurch City Council and Environment Canterbury must grant consent and are limited as to the matters over which they can impose conditions. These matters of control would be specified in the OIC and would avoid or mitigate potential adverse effects on the environment.

4.9 The OIC would also provide for consent applications for BRRP to be non-notified. The OIC would provide for limited consultation, by requiring Environment Canterbury and Christchurch City Council to seek written comment from affected persons and provide at least 10 working days for those comments. To improve certainty for the applicant, the councils and the community, it is proposed that the Order in Council specify the affected parties to be consulted and also enable the local authorities to consult any other person they consider to be appropriate.

***Benefits***

- This option will provide for a prompt resource consent process for BRRP. A non-notified process will reduce administrative delays associated with notification and lengthy notified hearing processes under the RMA.
- Retaining the ability for Christchurch City Council and Environment Canterbury to obtain specified affected party feedback into the resource consent process promotes well informed decision making, albeit in a restricted manner. It provides an opportunity for affected parties to have a say and have their views considered before a decision on an application is made.
- Consultation will assist Christchurch City Council and Environment Canterbury in the development of appropriate and robust conditions.
- Adverse effects can be avoided, remedied or mitigated through appropriate conditions.
- Christchurch City Council and Environment Canterbury can focus their time and resources on developing appropriate conditions, rather than debating the merits of the proposal.
- There will be no objections or appeals to the Environment Court, except by the applicant, thus reducing cost and potential delays
- A controlled activity status would provide greater certainty for the BRRP as it removes any doubt about whether an application would be granted consent or not. The applicant will therefore be able to purchase the necessary plant for the processing of waste with greater certainty and less delay.

#### *Costs / Limitations*

- Christchurch City Council and Environment Canterbury must grant consent, even if they consider the effects of the proposal to be unacceptable.
- Affected parties have no ability to influence whether or not consents should be granted as a controlled activity status means a local authority must grant consent to the proposal.
- 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 local authority's ability to consult with affected parties.
- 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).
- 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.
- There is potential for the OIC itself to be challenged as to its reasonableness under CER Act 2011.

- 4.10 Option One is the preferred option because it strikes the appropriate balance between providing certainty in a timely manner and considering the views of affected parties and the ability to impose conditions of consent.
- 4.11 Adverse effects on the environment can be mitigated through conditions of consent. The responsibility for imposing conditions rests with Christchurch City Council and Environment Canterbury. Local authorities are best placed to determine appropriate and robust conditions with their experience and local knowledge. Local authorities will also be responsible for monitoring and enforcement and may wish to include conditions to this effect.
- 4.12 Consultation with affected parties is an important and informative part of decision making under the RMA. Consultation can directly impact the conditions imposed on the consent. The Christchurch City Council indicated a preference for consultation by issuing a public notice seeking comments, rather than identifying affected parties. In their view, consultation via a public notice would reduce the risk of judicial review. However, without serving notice on specified affected parties there is a risk that those who will be adversely affected will not see the public notice and will miss their opportunity to make a comment.
- 4.13 Option One is the preferred option as it represents the least departure from standard RMA process (status quo), while providing for a timely response to the waste issues in greater Christchurch and assists with the regions recovery.

***Option 2: Non notified, existing activity status, with limited consultation***

- 4.14 Option Two provides for consents for temporary storage and processing of waste BRRP to be processed in accordance with existing activity status in the relevant plans (non-complying and discretionary) but on a non-notified basis and with limited consultation.
- 4.15 The BRRP proposal is a non-complying activity in the Christchurch City Council District Plan and a discretionary activity in the Environmental Canterbury Regional Plan. Unlike a controlled activity, a discretionary and non-complying activity can be declined. The processing of the consent via the existing activity status (rather than controlled activity status) will widen the scope of matters that could be considered as part of the application and will risk the application for resource consent being declined.
- 4.16 Option Two provides for consent applications for BRRP to be non-notified. The OIC would provide for limited consultation, by requiring Environment Canterbury and Christchurch City Council to seek written comment from affected persons and provide at least 10 working days for those comments to be provided. In order to improve certainty for the applicant, the councils and the community, it is proposed that the Order in Council specify the parties to be consulted and also enable the local authorities to consult any other person they consider appropriate.

***Benefits***

- The scope of matters that can be considered as part of the resource consent application is broad and will provide the opportunity for a wide range of environmental effects to be mitigated through appropriate conditions.

- A non-notified process will reduce administrative delays associated with notification and lengthy notified hearing processes under the RMA.
- Retaining the ability for Christchurch City Council and Environment Canterbury to obtain specified affected party feedback into the resource consent process promotes well informed decision making, albeit in a restricted manner. It provides an opportunity for affected parties to have a say and have their views considered before a decision on an application is made.
- Consultation will assist Christchurch City Council and Environment Canterbury in the development of appropriate and robust conditions.
- Ability to consider a range of possible effects and avoid remedy or mitigate appropriately through consent conditions.
- There will be no objections or appeals to the Environment Court, except by the applicant, thus reducing cost and potential delays
- 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 local authority's ability to consult with affected parties.
- 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).
- 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.
- There is potential for the OIC itself to be challenged as to its reasonableness under CER Act 2011.

#### *Costs/Limitations*

- Unlike a controlled activity status, a discretionary and non-complying activity status does not provide certainty that the application will be granted. There would be no certainty for the applicant and this could result in possible delays in purchasing plant and materials while the applicant waits to see whether consent is granted or not.
- The discretionary and non-complying activity status widens the scope on matters that can be considered and will potentially require Christchurch City Council and Environment Canterbury to focus their time debating the merits of the proposal rather than developing appropriate conditions.
- The regional and district planning documents do not reflect the Canterbury Earthquake events and could make it difficult for Christchurch City Council and Environment Canterbury to grant consent to the proposal.

4.17 This is the option most preferred by Environment Canterbury as they are able to maintain full discretion to impose conditions without the timing issues associated with notification. However, Option Two is not favoured as it does not provide sufficient certainty that the consent would be granted. There is a high risk that the applications for land use activities, which are non-complying activities in the Christchurch City District Plan, would have to be declined if the effects were more than minor and the activity was contrary to the objectives and policies in the plan.

4.18 If the temporary storage and processing of waste at BRRP is not provided for, this could compromise the ability for existing resources to be reused in the recovery effort.

### ***Option Three: Non-notified, controlled activity, with no consultation***

4.19 Option Three provides for resource consent applications to be considered on a non-notified basis, with no opportunity for consultation in any circumstance.

4.20 All resource consent applications for BRRP will be processed as a controlled activity. The Christchurch City Council and Environment Canterbury would therefore be obliged to grant consent. The matters over which the local authority has control, and can impose conditions, would be specified in the OIC.

4.21 The OIC would also provide for consent applications for activities at BRRP to be processed on a non-notified basis. Written approvals from affected parties would not be required and there be no opportunity for formal public notification, submissions or appeals.

### ***Benefits***

- This option ensures that the resource consent applications can be considered without the delay associated with notification and consultation processes. Time savings result from not needing to call for and analysing comments, as well as removing the requirement for a hearing. Removing notification and consultation processes would save a minimum of 50 working days processing time.
- There will be no objections or appeals to the Environment Court, except by the applicant, thus reducing cost and potential delays for both the local authority and BRRP.
- Adverse effects can be avoided, remedied or mitigated through appropriate conditions.
- A controlled activity status would provide certainty to the BRRP as it removes any doubt about whether an application would be granted consent or not. The applicant will therefore be able to purchase the required plant for BRRP with certainty and less chance of delay.
- Decision makers can focus their time and resources on developing appropriate conditions, rather than debating the merits of the proposal.

### ***Costs/limitations***

- A controlled activity status means local authorities must grant consent, even if they consider the effects of the proposal to be unacceptable.

- Under the RMA public participation is a key means by which local authorities identify adverse effects arising from an activity and negotiate with the community acceptable ways of managing these effects. Removing public participation means persons affected by BRRP will not get an opportunity to have a say in the activities that impact on them (i.e. noise, dust and vibration and heavy vehicle movements)
- Removing all forms of public and affected party participation removes the opportunity for submitters to correct factual or legal mistakes, particularly if the adverse effects prove to be more widespread or severe than expected. The risk of Christchurch City Council and Environment Canterbury failing to identify all adverse effects would normally be mitigated by the local authority's ability to consult.
- Removing all public participation heightens the risk for judicial review including possible challenge to the OIC itself on the grounds of reasonableness. Judicial reviews of decisions can significantly impact on the time and cost of obtaining resource consent.

4.22 Option Three would streamline the resource consent process in comparison to the status quo, but does not provide any ability for affected parties to comment on the proposal. Consultation is a significant part of the RMA decision making process and completely removing this right in this instance is considered an unnecessary relaxation of RMA provisions as they are usually applied. In addition, removing the ability for Christchurch City Council and Environment Canterbury to consult with affected parties increases the risk of judicial review, which could delay the commencement of processing waste.

4.23 Local authorities use consultation as another tool to ensure that the application appropriately identifies and proposes a means of mitigating adverse effects on the environment. Both Christchurch City Council and Environment Canterbury have indicated that under standard RMA process the BRRP would most likely be publicly notified. The consultation process is a useful tool to identify a range of adverse effects and ways they can be mitigated.

4.24 The time saved from removing consultation with affected parties does not outweigh the benefits that consultation provides for the reasons outlined above. Option Three is not the preferred option.

***Option Four: Permitted activity, with performance standards drafted by Central Government in liaison with Environment Canterbury and Christchurch City Council***

4.25 Under this option activities at BRRP would be deemed a permitted activity, subject to certain performance standards. The performance standards would be drafted by Central Government in liaison with Christchurch City Council and Environment Canterbury.

4.26 No resource consent application would be required. This option would be reliant on the applicant clarifying what activities are proposed and how the effects are going to be appropriately mitigated.

4.27 The OIC would override any district and regional plan rules that would otherwise have required resource consent to be obtained. To avoid other activities being inadvertently

provided for as permitted activities, the provisions of the OIC would have to be very specific.

### *Benefits*

- A permitted activity status would provide certainty as it removes any doubt about whether an application would be granted consent or not. Activities that require consent at the BRRP could begin as soon as the OIC is gazetted.
- There is potential time and cost savings for the applicant as they would not need to prepare comprehensive resource consent applications.
- The burden on the local authorities to undertake an assessment of an application is removed.
- Avoids any appeal process and associated time delays.

### *Costs/limitations*

- This option would be reliant on the applicant clarifying what activities are proposed and how the effects would be mitigated i.e. through performance standards. It is unlikely all necessary information to confirm likely conditions of consent in an OIC will be available within the timeframes required for the drafting of the OIC.
- This option is the least likely to adequately avoid, remedy or mitigate adverse effects on the environment. Controls in the OIC are unlikely to be sophisticated or flexible enough to adequately anticipate and manage the range and variability of environmental effects generated.
- As it is the local authority's role and responsibility to monitor and enforce their plans, it is the local authority that is best placed to lead and deal with conditions through a consent process, not Central Government.
- Persons severely affected by the application would not get an opportunity to be part of the resource consent process as there would be no requirement to consult with affected parties. This could increase the risk of being judicially reviewed.
- The local authority does not have the ability to make changes to the performance standards and any amendments would have to be through an amendment to the OIC, which is time consuming.

4.28 Christchurch City Council expressed a preference for Option Four as they believe that this approach would be faster as they would not have to go through a consent process. However under this approach there would be an overly complex and lengthy upfront process for preparing an OIC. Time gained by not having to process a resource consent may well be lost in a more complicated OIC process.

4.29 This approach is also the most significant departure from status quo RMA processes. It would present the least flexibility for BRRP, Christchurch City Council and Environment Canterbury to negotiate a mutually acceptable set of performance standards. Christchurch City Council and Environment Canterbury should retain some form of control over the processes as they have the local knowledge and expertise and are best placed to undertake ongoing monitoring and enforcement. Due to the nature and

scope of the BRRP operations, a comprehensive consent process is more appropriate, therefore this is the least preferred option.

- 4.30 While Christchurch City Council expressed a preference for an Order in Council that would provide for BRRP as a permitted activity (Option Four), they are comfortable with the non-notified and controlled activity status of provided in the preferred Option One.
- 4.31 The following table summarises the discussion outlined above and shows how each of the four options being considered meets or does not meet the assessment criteria.

## **5.0 Consultation**

- 5.1 The following Government 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 Fisheries, Ministry of Culture and Heritage, Ministry of Economic Development, Ministry of Health, Ministry of Justice, Ministry of Transport, Te Pūnaha Kōwhiri and Treasury. The Department of Prime Minister and Cabinet have also been informed of the proposed OIC.
- 5.2 The Christchurch City Council and Environment Canterbury have been heavily involved in discussions relating to the BRRP proposal and the possible OIC. Christchurch City Council ultimately prefers an option that provides for the proposal to be provided for as a permitted activity (Option Four), while Environment Canterbury's preference is for broad discretion and ability to decline the application to be retained (Option Two). Both local authorities supported the non-notified approach, however, the Christchurch City Council prefer consultation to occur prior to the resource consent application being formally lodged with the local authority concerned.
- 5.3 Christchurch City Council requested that the OIC provide for permanent disposal of silt and hardfill material from repair and replacement of infrastructure. The proposed OIC should only cover temporary storage, sorting and processing of waste material and not permanent disposal. It is considered that the scope of this OIC should be limited so as to only streamline the resource consent processes when necessary. Given the storage of waste material is provided for by the Permitted Activities Order, and subsequent public notice issued by Christchurch City Council, there is not the urgency to provide for the permanent disposal of waste at the Burwood Landfill. Furthermore, given the likely public interest and potential environmental effects, I consider that it is appropriate for any permanent disposal to follow standard resource consent processes.
- 5.4 BRRP Ltd has been involved in the development of the proposed OIC and has not raised any concerns with the preferred option.
- 5.5 Section 73(2) of the CER Act 2011 requires the Canterbury Earthquake Recovery Review Panel to review all draft OIC before they are recommended under section 71 of that Act. Consultation with the Review Panel will be undertaken and the outcome of this consultation will be advised prior to Cabinet.

## **6.0 Conclusions and recommendations**

- 6.1 The preferred option is for an OIC which provides for the temporary storage and processing of demolition and construction waste BRRP to store and process Canterbury earthquake demolition material as a non-notified controlled activity

resource consent with limited consultation, and no hearing or appeal rights (Option One).

- 6.2 Proceeding with Option One could result in a time saving of at least 50 working days (for those applications that would have been notified). It also retains a largely intact RMA process, whereby affected parties are consulted as part of the application. Furthermore Christchurch City Council and Environment Canterbury are still able to impose and review conditions of consent to manage any adverse effects of the activities being undertaken at BRRP.
- 6.3 Option One provides for significant time and cost savings for the urgent temporary storage and processing of demolition material resulting from the earthquake events. BRRP can commence its urgent recovery works without undue delay and cost as well as assisting with the greater Christchurch's wider recovery and rebuilding by accepting demolition waste.

## **7.0 Implementation**

- 7.1 A definition of the BRRP activities and a sunset clause are likely to be incorporated into any OIC. The proposed OIC will only be in force for a set period of time (for the duration of CER Act until 19 April 2016) and will be limited to resource consents required for the establishment, operation and decommissioning of activities associated with the temporary storage and processing of demolition and construction material at BRRP. An expiry date will ensure that consent applicants are unable to use the OIC provisions in perpetuity where such ability cannot be justified.
- 7.2 The OIC will reduce the usual opportunities for land owners and affected parties to participate in statutory RMA processes and remove or restrict any rights of appeal. While such restrictions are not desirable, they are considered necessary to ensure that the processing of demolition and construction material can get underway as soon as possible and wider Christchurch can benefit from activities at BRRP being able to continue to accept demolition waste in assisting with the earthquake recovery and rebuilding of greater Christchurch.
- 7.3 The activities at BRRP include the temporary storage and processing of demolition and construction material and associated activities, including haulage. Detailed conditions relating to these matters will be agreed with Environment Canterbury and Christchurch City Council.
- 7.4 It is proposed that normal RMA enforcement provisions will apply to any resource consents issued under the proposed streamlined resource consent process. The relevant local authorities would retain responsibility for ensuring any resource consents issued are monitored, and recovery works are carried out in accordance with conditions of consent.
- 7.5 Due to the urgency of the recovery works Cabinet will be asked to agree to seek a waiver of the 28 day rule to enable the OIC to commence the day it is approved by Executive Council. This is consistent with the approach taken to other OIC. As mentioned above, the Order will expire on the expiry of the CER Act 2011.

## **8.0 Monitoring, evaluation and review**

- 8.1 Ministry for the Environment officials will monitor the effect of the OIC by liaising with the local authorities to see if the OIC is being used, whether it has been successful in providing for the activities at BRRP and to determine the level of community concern over the use and effect of the OIC.
  
- 8.2 To achieve this, the Ministry for the Environment has written to the local authorities in Canterbury and has asked them to monitor and report on the effect of existing OIC's and any new OIC's that are approved and are relevant to their functions under the RMA. The reporting will be quarterly, with the first report due 31 August 2011. This quarterly reporting will also feed into the monitoring that the Christchurch Earthquake Recovery Authority (CERA) is required to do under section 88 of the CER Act on its effectiveness. Should any implementation issues arise, the OIC can be modified or revoked if necessary.

