

**BEFORE THE CHRISTCHURCH REPLACEMENT DISTRICT PLAN  
HEARINGS PANEL**

**IN THE MATTER** of the Resource Management Act 1991 and the  
Canterbury Earthquake (Christchurch Replacement  
District Plan) Order 2014

**AND**

**IN THE MATTER** of the Specific Purpose (Burwood Landfill and Resource  
Recovery Park) Zone Proposal (Stage 3)

**SUBMITTER** **CANTERBURY REGIONAL COUNCIL** (3629, FS-5004)

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**CLOSING LEGAL SUBMISSIONS OF COUNSEL  
FOR THE CANTERBURY REGIONAL COUNCIL**

**16 December 2015**

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**MAY IT PLEASE THE HEARINGS PANEL:**

- 1 These opening legal submissions are filed on behalf of the Canterbury Regional Council ("CRC") in respect of Proposal 21 – Specific Purpose (Burwood Landfill and Resource Recovery Park) Zone Proposal (the "Proposal") of Stage 3 of the proposed Christchurch Replacement District Plan ("pRDP").

**CRC's involvement in the Proposal**

- 2 The CRC submitted in general support of the notified version of the Proposal and lodged further submissions (FS5004) in support, or support in part, of specified relief sought by Burwood Resource Recovery Park ("BRRP") and Christchurch City Council ("CCC"). This included conditional support for the inclusion of Site B for the disposal of earthquake waste and the labelling of Site D as "Burwood Resource Recovery Park", subject to consistency with the Canterbury Land and Water Regional Plan ("LWRP").
- 3 The CRC has not provided evidence on this Proposal. However, it became involved in the hearing on this Proposal following the identification of a potential inconsistency between the Revised Proposal set out in the Rebuttal Evidence of Ms Rolton, and the LWRP. A Memorandum of Counsel was filed on 9 December 2015 addressing this matter and Counsel attended the hearing to answer any questions of the Hearings Panel.

**Canterbury Land and Water Regional Plan**

- 4 The LWRP provides for the discharge of earthquake related residual demolition waste, liquefaction silt, and infrastructure waste onto or into land within the Burwood Landfill Special Purpose Site identified on Map 9.2 as a controlled activity.<sup>1</sup> Any discharge of the specified waste outside of the Burwood Landfill Special Purpose Site is a prohibited activity under Rule 9.5.18.

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<sup>1</sup> Canterbury Land and Water Regional Plan, Section 9, Rule 9.5.17.

- 5 The Burwood Landfill Special Purpose Site comprises the area identified as "Burwood Landfill" in Appendix 21.12.3.1 of the Revised Proposal. Site B identified in Appendix 21.12.3.1 and the remaining areas in the Specific Purpose (Burwood Landfill and Resource Recovery Park) Zone (referred to as sites C and D), sit outside of the Burwood Landfill Special Purpose Site. Therefore disposal of earthquake waste on sites B, C and D is likely to be a prohibited activity under the LWRP.

### **LURP Review Recommendation**

- 6 As part of its review of the Land Use Recovery Plan ("LURP"), the CRC has recommended that the Minister for Canterbury Earthquake Recovery ("the Minister") amend Map 9.2 of the LWRP to include Site B within the Burwood Landfill Special Purpose Site. The recommendation provided to the Minister is as follows:

*The Minister amend the Land Use Recovery Plan to include a new Action that directs Environment Canterbury, pursuant to section 24(1)(a) of the CER Act, to amend Map 9.2 of the Canterbury Land and Water Regional Plan, Burwood Landfill Specific Purpose Site, to include 'Site B', an additional area to the north of the site, currently used for resource recovery activities.*

- 7 Section 24(1)(a) of the Canterbury Earthquake Recovery Act 2011 ("CER Act") requires that a council must amend an RMA document if a Recovery Plan directs to include specific objectives, policies and methods set out in the Recovery Plan. These amendments must be made as soon as practicable without using the process in Schedule 1 of the Resource Management Act 1991 or any other formal public process.
- 8 As an alternative mechanism, the Minister may consider that it is necessary to use section 27 of the CER Act to amend the LWRP rather than approve an amendment to the LURP as recommended by CRC. If the Minister uses section 27 to amend the LWRP then this change will be made by public notice, without any other formal public process.
- 9 The CRC's recommendation through the LURP Review to amend the LWRP remains with the Minister for his consideration. The CRC will advise the Hearings Panel and parties as soon as it receives a decision from the Minister.

### **Consistency of Revised Proposal with LWRP**

- 10 As set out in the Memorandum of Counsel dated 9 December 2015, the potential inconsistency with the LWRP arose as a result of the removal of Rule 21.12.2.2.1 P1(a), which resulted in the disposal of earthquake waste on Sites B, C and D becoming a permitted activity. As notified, the Proposal specified that the disposal of earthquake waste could only take place as a permitted activity on the area marked as "Burwood Landfill". CRC was concerned that the revised provisions were inconsistent with the LWRP (as sought to be amended by the Minister) as Sites C and D sit outside of the Burwood Landfill Special Purpose Site on Map 9.2 and therefore disposal of earthquake waste on these sites is likely to be prohibited under the LWRP.
- 11 This potential inconsistency was addressed by the amendments proposed by Ms Rolton in her Supplementary Evidence dated 8 December 2015. The changes recommended by Ms Rolton were subsequently supported by Mr Murray and Ms Yozin, planning experts for BRRP and the Crown respectively.
- 12 CRC has since reviewed the Agreed Position redline version dated 10 December 2015 ("the Agreed Position").
- 13 It is submitted that permitting the disposal of earthquake waste in the pRDP in areas outside of the Burwood Landfill Specific Purpose Site where disposal is likely to be prohibited in the LWRP would be inconsistent with the LWRP. The LWRP gives a clear indication that disposal should only take place on the Burwood Landfill Specific Purpose Site identified on Map 9.2. The provisions of this Proposal should therefore distinguish between those areas identified on Map 9.2 and those that sit outside of it, through the imposition of stricter controls.
- 14 This is achieved in the Agreed Position. Rule 21.12.2.2.1 P1(a) provides that disposal of earthquake waste can only take place as a permitted activity on the area marked as "Burwood Landfill" and "Site B" in Appendix 21.12.3.1. The disposal of earthquake waste outside of these areas will require resource consent. On that basis, it is submitted that the Agreed Position is not inconsistent with the LWRP, as sought to be amended by the Minister through the LURP Review.
- 15 It is acknowledged that the disposal of earthquake waste on Site B as a permitted activity is also inconsistent with the LWRP as until the Minister

makes a decision to amend the LWRP, Site B remains outside of the Burwood Landfill Specific Purpose Site on Map 9.2 of the LWRP and therefore the disposal of earthquake on Site B would also likely be a prohibited activity.

- 16 The parties to the Joint Memorandum dated 8 December 2015 sought that the Hearings Panel prioritise its decision on the Zone. The CRC supported this joint request subject to the Minister making a decision on the LURP Review recommendation to amend the LWRP. If the Minister makes his decision and directs a change to the LWRP, it is submitted that the disposal of earthquake waste on Site B as a permitted activity would not be inconsistent with the LWRP.
- 17 If the Minister decides not amend the LWRP to include Site B within the Burwood Landfill Specific Purpose Site on Map 9.2, then it is submitted that the disposal of earthquake waste on Site B should be treated the same as Sites C and D and become a controlled activity. This would be achieved by removing reference to "Site B" in Rule 21.12.2.2.1 P1.
- 18 As set out above, CRC will advise the Hearings Panel as soon as it receives any decision from the Minister in relation to this matter.

Dated this 16<sup>th</sup> day of December 2015



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Counsel for Canterbury Regional Council