

## **Project Deed Summary - Final 16/05/2019**

The Project Deed sets out the intentions of the parties and the principal terms of the Agreement between Council, Waimea Irrigators Ltd (WIL), Waimea Water Ltd (WWL) and Crown Irrigation Investments Ltd (CIIL). It also sets out the key terms on which Council will provide credit and project support for the Project and certain other related matters.

The following is a summary of some of the key provisions:

### **Council Credit Support:**

CIIL will benefit from credit support capped at \$29 million from Council on standard guarantee terms. The Council credit support will be secured by the issuance of debenture stock by Council in favour of CIIL. The Council credit support will be exercisable by CIIL if WWL fails to comply with its obligations under the CIIL Loan, including where:

- CIIL is entitled to exercise any right under the CIIL Loan following an event of default by WWL under the CIIL Loan terms;
- WWL fails to pay an amount due and payable to CIIL (including as a result of WWL's or WIL's insolvency);
- The difference between the outstanding amounts payable under the CIIL Loan and the Council Credit Support cap is \$200,000 or less;
- The Dam is materially damaged and the cost of reinstatement exceeds the amount of any recovery under the relevant agreements or insurance policies and such shortfall is material; or
- Practical completion of the Dam has not occurred within 12 months of the scheduled completion date.

If Council makes up a payment breach by WWL to CIIL then to the extent that an amount unpaid by WIL under the Wholesale Water Augmentation Agreement led to that payment breach, the unpaid amount will remain owing by WIL to WWL under the Wholesale Water Augmentation Agreement and WWL will incur a debt to Council equal to the amount paid by Council to remedy the payment breach.

**Council Call Option:** Council will be able to exercise a call option to acquire all of CIIL's rights and obligations under the CIIL Loan for an amount equal to all outstanding amounts under the CIIL Loan if CIIL makes demand under the Council credit support arrangement.

**CCO Loan:** Council will advance \$3.75 million to WWL by way of a loan in accordance with the terms of the TDC WWL Loan Agreement. This Council debt, along with other advances (if any) will be subordinated (and rank second) to CIIL's debt on standard market terms.

**Council Cost Overrun:** To fund construction cost overruns for the Dam, if they arise. If this happens, calls for additional capital will be made severally to maintain Council's and WIL's shareholding proportions, up to a cap of \$3 million, shared equally (with the first draw for WIL being \$1.5 million under the CIIL Loan facility). Beyond that Council is responsible for meeting project cost over-runs over \$3 million.

### **Council Compensation Events:**

Compensation events are events caused by an act of Council. If a compensation event occurs then Council is liable to pay compensation to irrigators and other affiliated consent holders for demonstrated losses of value and economic losses caused by the event. The liability is limited to a maximum of \$50m in aggregate for events occurring within the next 40 years.

It will be a Council Compensation Event if any Council act including any change to the TRMP, has

the effect of:

1. removing the right to Affiliation for WIL's Shareholders who hold a Shareholder Water Augmentation Agreement (SWAA) and an Affiliated Permit
2. allowing any person that does not hold a SWAA to become Affiliated or to have rights to take and use water equivalent to Affiliation.
3. materially changing the relativity of the rights or obligations of Affiliated WIL Shareholders and persons who are not Affiliated WIL Shareholders to take and use water.

In respect of the above, it will also be a Council "act" if:

- o Council does not use all reasonable endeavours to oppose or resist any process that would have one of the effects listed in bullets 1-3 above) and Council is permitted at law to do so.
- o Council does not manage the relevant provisions in the TRMP in relation to the taking of water by persons who are not Affiliated Permit holders.

Consequences of a Compensation Event: If WWL, CIIL or WIL considers that a Compensation Event has occurred, the parties will go through an agreed set of steps to determine compensation (if any) payable by Council.

WIL has undertaken to use all reasonable endeavours to support Council in opposing or resisting any process initiated by any third party that would have the effect of causing a Compensation Event, provided that this undertaking does not extend to WIL incurring costs (including professional fees) without WIL's approval.

#### **Agreed Principles:**

Council, WWL, WIL and CIIL have entered into the various Project Agreements on the basis that:

- o Council, WIL and CIIL will jointly fund the cost of the construction and operation of the Dam (in accordance with the terms of the relevant agreements), through WWL and, with WIL funding the repayment obligations to CIIL via WWL and backed by Council credit support, and, as a consequence, only Council and water users supplied by Council in accordance with the WWAA, and WIL and Affiliated WIL Shareholders will be entitled to directly benefit from the water to be released from the Dam for the purposes of taking water under the TRMP:
  - as between themselves, in the proportions set out in the WWAA;
  - on the basis that Affiliated WIL Shareholders will be able to enjoy the relatively superior rights associated with Affiliation as compared to any person who is not an Affiliated WIL Shareholder;
  - on the basis that no person is entitled to extract water as a consequence of the release of water from the Dam other than as permitted under the Wholesale Water Augmentation Agreements; and
  - on the basis that the Dam will be operated and water will be released from the Dam in accordance with the Dam resource consents and TRMP as at the date of Financial Close (December 2018)

## **Hydro Power**

# MAY 2019

The Deed includes a Term Sheet covering rights and obligations of each party in respect of Hydro Power generation, should Council pursue that option in the future. The Term sheets provides that: The primary purpose of the dam is to provide environmental flows to meet the Resource Consent conditions in order to ensure water supply security. Any hydro power option agreed to must not jeopardise, impede or diminish that primary purpose or increase costs or risks in regard to the primary purpose. All costs in relation to pursuing a hydro option will fall to Council. The Consent of WIL and CIIL is required to any Hydro Power option but that consent cannot be unreasonably withheld

## **Rates**

Provides that when setting fees and charges or setting rates in relation to the CIIL – Council \$10m Environmental loan or the \$8.75m shareholder advance to WWL. Council will not:

- Differentiate between Irrigators and other water permit holders or ratepayers.
- Exclusively allocate borrowing costs or repayments to irrigators or in such a way that disproportionately affects ratepayers who are irrigators.

These provisions do not prevent Council from target rating irrigators to recover any amount it's called on to pay under the credit support agreement.

RELEASED UNDER THE LOCAL  
GOVERNMENT OFFICIAL INFORMATION  
AND MEETINGS ACT 1987  
TASMAN DISTRICT COUNCIL  
MAY 2019