

<b>Decision released from confidential session</b>			
<b>Recommendation from (agenda report)</b>	<b>Date of meeting</b>	<b>Recommendation to (decision-making meeting)</b>	<b>Date of meeting</b>
N/a	n/a	Council	18 May 2021
<b>Report Title and number</b>			
Nelson City Council - Tasman District Council Engineering Services Agreement and Nelson City Council - Tasman District Council Waimea Community Dam Funding Agreement (R25852)			
<b>Documents released</b>			
Report R25852, its attachments (A1382534, A1730382, A1844948, A2518793, A2602923, A2618282 and A2618446), and the decision			
<b>Decision</b>			
Resolved CL/2021/084			
<b><i>That the Council</i></b>			
<ol style="list-style-type: none"> <li>1. <b><i><u>Receives</u> the report Nelson City Council – Tasman District Council Engineering Services Agreement and Nelson City Council - Tasman District Council Waimea Community Dam Funding Agreement (R25852) and its attachments (A1382534, A1730382, A1844948, A2518793, A2602923, A2618282 and A2618446); and</i></b></li> <li>2. <b><i><u>Approves</u>, subject to a reciprocal approval by the Tasman District Council, the Nelson City Council - Tasman District Council Engineering Services Agreement (A2518793) and delegates authority to the Chief Executive to make any necessary minor changes and sign the renewed agreement incorporating the following:</i></b> <ol style="list-style-type: none"> <li>i. <b><i>Tasman District Council to continue to supply water to Nelson City Council for the residential properties in the Nelson Residential Water Supply Area;</i></b></li> <li>ii. <b><i>Tasman District Council to retain ownership and administration of the waterworks in the Nelson Industrial Water Supply Area;</i></b></li> <li>iii. <b><i>Alignment of the expiry date of the Nelson Industrial Water Supply Area with the Engineering Services Agreement expiry terms;</i></b></li> <li>iv. <b><i>Inclusion of updated sewerage services;</i></b></li> </ol> </li> </ol>			

- v. ***The Nelson City Council supply of water to Tasman District Council from the Roding Dam development to cease once the Waimea Community Dam is completed; and***
3. ***Notes that the cost of the Waimea Dam has increased; and***
4. ***Declines the request from Tasman District Council to increase the amount of its contribution to the Dam from \$5M to \$10.474M and confirms the rights to water at 22,000m<sup>3</sup>/day as previously agreed; and***
5. ***Approves a 40 year contract term for the Nelson City Council - Tasman District Council Waimea Community Dam Funding Agreement; and***
6. ***Approves the removal of the ten year restriction on the share option in the Nelson City Council – Tasman District Council Waimea Community Dam Funding Agreement; and***
7. ***Approves the Waimea Community Dam Funding Agreement (A2618446) subject to a reciprocal approval by the Tasman District Council and delegates authority to the Chief Executive to make any necessary minor changes and sign the agreement; and***
8. ***Approves transferring the budgeted capital grant in 2020/21 for the \$5M grant for the Waimea Community Dam from the Nelson City Council Economic activity to the Nelson City Council Water activity; and***
9. ***Approves, subject to the signing of the Nelson City Council- Tasman District Council Engineering Services Agreement and Nelson City Council - Tasman District Council Waimea Community Dam Funding Agreement, the transfer of \$5M to Tasman District Council; and***
10. ***Agrees that Report (R25852) and its attachments (A1382534, A1730382, A1844948, A2518793, A2602923, A2618282 and A2618446) and the decision be made publicly available once negotiations are concluded.***

## **PUBLIC EXCLUDED**

Item 1: Nelson City Council - Tasman District Council Engineering Services Agreement and Nelson City Council - Tasman District Council Waimea Community Dam Funding Agreement



**Council**

**18 May 2021**

**REPORT R25852**

### **Nelson City Council - Tasman District Council Engineering Services Agreement and Nelson City Council - Tasman District Council Waimea Community Dam Funding Agreement**

#### **1. Purpose of Report**

- 1.1 To approve the Engineering Services Agreement (ESA) between Nelson City Council (NCC) and Tasman District Council (TDC) and the approval of the NCC – TDC Waimea Community Dam Funding Agreement (Agreement) subject to reciprocal agreement of TDC.
- 1.2 To consider a request from TDC to increase funding for the Waimea Community Dam from \$5 million to \$10.474 million.
- 1.3 To approve transferring the capital grant for the \$5 million grant to TDC from the Economic activity to the Water activity and the payment of \$5 million to TDC.

#### **2. Summary**

- 2.1 The ESA identifies the engineering services that each council provides to the other across the territorial authority boundary on Champion Road. It was last re-negotiated in 2015 (refer Attachments 1 and 2). Early discussions about changes to the ESA were held in 2017 between the NCC and TDC Chief Executives of the day (refer Attachment 3). More recently both councils have prepared the new draft ESA (refer Attachment 4) for adoption by both councils.
- 2.2 The water supply environment has changed with the TDC decision to construct the Waimea Community Dam and the construction of a water main from Suffolk Road to Hill Street North (in Nelson) as a result of the Summerset Richmond Ranges development. The ESA needs to reflect these decisions.
- 2.3 The Waimea Community Dam is currently being constructed in the upper Lee Valley on behalf of Waimea Water Limited. Council has earlier approved a grant of \$5M to TDC as a contribution to the dam construction subject to an agreement being approved by both councils.

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- 3.4 The draft agreement (refer Attachment 7) is now ready for adoption by both NCC and TDC.
- 2.4 The ESA and the agreement for a contribution to the construction of the Waimea Community Dam are dealt with together through this report as the ongoing supply of water across the boundary by TDC is linked to the successful completion of the dam.

### **3. Recommendation**

#### ***That the Council***

- 1. Receives the report Nelson City Council – Tasman District Council Engineering Services Agreement and Nelson City Council - Tasman District Council Waimea Community Dam Funding Agreement (R25852) and its attachments (A1382534, A1730382, A1844948, A2518793, A2602923, A2618282 and A2618446); and**
- 2. Approves, subject to a reciprocal approval by the Tasman District Council, the Nelson City Council - Tasman District Council Engineering Services Agreement (A2518793) and delegates authority to the Chief Executive to make any necessary minor changes and sign the renewed agreement incorporating the following:**
  - i. Tasman District Council to continue to supply water to Nelson City Council for the residential properties in the Nelson Residential Water Supply Area;**
  - ii. Tasman District Council to retain ownership and administration of the waterworks in the Nelson Industrial Water Supply Area;**
  - iii. Alignment of the expiry date of the Nelson Industrial Water Supply Area with the Engineering Services Agreement expiry terms;**
  - iv. Inclusion of updated sewerage services;**
  - v. The Nelson City Council supply of water to Tasman District Council from the Roding Dam development to cease once the Waimea Community Dam is completed; and**
- 3. Notes that the cost of the Waimea Dam has increased; and**
- 4. Declines the request from Tasman District Council to increase the amount of its contribution to the Dam from**



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***\$5M to \$10.474M and confirms the rights to water at 22,000m<sup>3</sup>/day as previously agreed; and***

- 5. Approves a 40 year contract term for the Nelson City Council - Tasman District Council Waimea Community Dam Funding Agreement; and***
- 6. Approves the removal of the ten year restriction on the share option in the Nelson City Council – Tasman District Council Waimea Community Dam Funding Agreement; and***
- 7. Approves the Waimea Community Dam Funding Agreement (A2618446) subject to a reciprocal approval by the Tasman District Council and delegates authority to the Chief Executive to make any necessary minor changes and sign the agreement; and***
- 8. Approves transferring the budgeted capital grant in 2020/21 for the \$5M grant for the Waimea Community Dam from the Economic activity to the Water activity; and***
- 9. Approves, subject to the signing of the Nelson City Council-Tasman District Council Engineering Services Agreement and Nelson City Council - Tasman District Council Waimea Community Dam Funding Agreement, the transfer of \$5M to Tasman District Council; and***
- 10. Agrees that Report (R25852) and its attachments (A1382534, A1730382, A1844948, A2518793, A2602923, A2618282 and A2618446); and the decision be made publicly available once negotiations are concluded.***

#### **4. Exclusion of the public**

4.1 This report has been placed in the public excluded part of the agenda in accordance with section 48(1)(a) and section 7 of the Local Government Official Information and Meetings Act 1987. The reason for withholding information in this report under this Act is:

- Section 7(2)(h) To enable the local authority to carry out, without prejudice or disadvantage, commercial activities
- Section 7(2)(i) To enable the local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)

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### **Item 1: Nelson City Council - Tasman District Council Engineering Services Agreement and Nelson City Council - Tasman District Council Waimea Community Dam Funding Agreement**

#### **5. Background**

##### **Engineering Services Agreement**

- 5.1 The ESA sets out the working relationship between both councils for engineering services that each provide across the territorial authority boundary along Champion Road and the Wakatu Industrial Estate/lower Nayland Road area.
- 5.2 TDC provides potable water, wastewater and stormwater services to properties within Nelson City that are generally adjacent to Champion Road (Nelson Residential Water Supply Area) or are within the Wakatu Industrial Estate/Lower Nayland Road industrial area (Nelson Industrial Water Supply Area). NCC also provides limited stormwater services to TDC plus potable water to TDC, the latter under an agreement dating from the construction of the Roding Water Supply in the 1940's. Both councils supply water across the boundary during emergencies and droughts.
- 5.3 Some NCC wastewater reticulation that services NCC ratepayers has been constructed in Champion Road. Recording location and maintenance responsibility in the ESA is appropriate.
- 5.4 As part of the construction of the Summerset Richmond Ranges Retirement Village in Hill Street North (in Nelson City Council's jurisdiction) the developer has constructed a potable water main between the NCC main in Suffolk Road and Hill Street North. This main has been sized to cater for future emergency supply by NCC to the residential area up to Champion Road plus the Nelson Industrial Water Supply Area. Some additional pipework will need to be constructed before this can be put in place.
- 5.5 Future trunkmain construction along Hill Street North will also allow NCC to connect to the larger TDC watermain in Champion Road. This will provide for the transfer of significant volumes of water in both directions if required in emergencies.

##### **Waimea Community Dam**

- 5.6 TDC and Water Users on the Waimea Plains are currently constructing the Waimea Community Dam in the upper Lee Valley south of Brightwater. This dam will impound water during winter and release it over the summer to recharge the Waimea aquifer and maintain environmental flows in the Waimea River.
- 5.7 At the meeting of 15 May 2018 the Council agreed to allocate \$5M for a grant to the Waimea Dam project in 2020/21 subject to the following conditions:

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- *A contract approved by both councils, be signed at the time of the transfer of the funding assuring Nelson's ongoing rights to access 22,000m<sup>3</sup>/day of water from the Waimea Aquifer and*
- *That the contract allow for the grant to be transferred into a shareholding in the Dam Company at any point in the future; and*
- *That a new Engineering Services Agreement with Tasman District Council has been detailed in the Terms (A1778747) and exchange of letters between the Chief Executives of both Councils (A1844948) and this agreement will be updated from time to time as circumstances require.*

5.8 In November 2018, Council considered a request from TDC to either increase its contribution to the Dam or reduce water access. The request was made following an overall increase in the cost of the Dam from \$82.5 million to \$104.5 million.

5.9 In response to this request, Council passed the following resolutions at the meeting of 27 November 2018.

*(Council) Authorises the Chief Executive to write to Tasman District Council confirming the following:*

- *Nelson City Council's contribution is \$5 million;*
- *Nelson City Council's contribution is included in 2020/21 of Nelson City Council's Long Term Plan 2018-28 and payment will be made on 1 July 2020, as requested by Tasman District Council;*
- *Nelson City Council has noted that the cost of the Waimea Dam has increased by 30% but declines the request from Tasman District Council to increase the amount of its contribution to the Dam and/or decrease the volume of water that its contribution provides access to;*
- *Nelson City Council, or its successor, will have ongoing rights to access 22,000m<sup>3</sup>/day of water from the Waimea Aquifer;*
- *Nelson City Council, or its successor, has the right to convert the \$5 million to shares in Waimea Water Limited no earlier than 2028, being 10 years after financial close for the Waimea Dam – the number of shares representing the rights to take up to 22,000m<sup>3</sup>/day (515 hectares equivalent);*
- *If Nelson City Council exercises its rights to convert the grant to shares, then it will also have the right to appoint, jointly with Tasman District Council, a director to the Waimea Dam Company board.*

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- 5.10 On 1 March 2021, TDC wrote to Council advising that the expected cost of the project had increased to \$159 million and requested that Council increase its funding for the Dam from \$5 million to \$10.474 million (refer Attachment 5).
- 5.11 TDC proportion the costs of the Dam based on extractive capacity and the economic, environmental and community benefits received by different classes of water beneficiaries. Using the increased costs TDC has proposed that the NCC contribution be increased to approximately \$7.4 million for water supply and \$3 million for economic, environmental and community benefits. This is based on Council retaining its water allocation of up to 22,000m<sup>3</sup> / per day. TDC notes that under its apportionment formula the \$5 million grant would equate to 14,900m<sup>3</sup> / day.
- 5.12 Nelson's grant of \$5 million was not linked to the formula used by TDC, but was a figure considered appropriate based on the expected construction costs of the day, benefits to NCC residents and ratepayers, total debt levels and following community consultation.

## 6. Discussion

### NCC-TDC ESA

- 6.1 There are four separate operational parts to the current ESA as set out below.

#### Part A: Water Supply to Nelson Residential Water Supply Area

- 6.2 Currently TDC acts as a bulk water supplier to NCC providing potable water for approximately 360 residential properties plus 1 school adjacent to Champion Road. This supply is achieved through six larger connections to streets and multiple properties plus 17 connections to individual properties making up 23 'bulk meter' connections. Total residential development in the area supplied with TDC water is expected to be approximately 475 lots.
- 6.3 TDC water charges for the water are based on a formula that combines the Richmond residential annual property services charge, the Waimea Community Dam charge and the volume supply charge for the water. The following table confirms these charges are greater than the NCC supply charges for similar volumes (up to 10,000m<sup>3</sup>/yr/property).

2020/21	NCC (\$ incl GST)	TDC (\$ incl GST)
Annual Property Services Charge/annum	200.60	349.20
Water /m <sup>3</sup>	2.092	2.22

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Waimea Community Dam District Wide Rate/prop/annum	-	17.75
Waimea Community Dam Charge 0.0025c/\$CV/property (eg for \$600,000CV)	-	15.00
Residential Final Bulk water cost /m <sup>3</sup>	-	3.72

- 6.4 The difference between the current TDC supply cost and the NCC residential charges leads to a current shortfall of funding of approximately \$65,000 per annum for the 362 houses and one school supplied. When the residential area is fully developed to approximately 475 houses and the school this shortfall could increase to approximately \$75,000 per annum (Opex cost). The shortfall is met by the general water account.
- 6.5 Council officers in NCC and TDC have looked closely at a number of options for the supply of water to this area - from status quo to NCC taking over partial or full supply. The partial supply option would reduce the level of revenue shortfall identified in 6.4 by allowing NCC to progressively take over supply (10% per year -once ownership of the new main from Suffolk Road vests in Council) of approximately 30% of the current properties over the first three years of this renewed ESA. By taking over the supply of water to part of this area NCC water charges would recover an extra \$6,000 (Year 1)-\$13,000 (Year 2)-\$19,000 (Year 3) per annum.
- 6.6 The partial supply option can be achieved with some minor reticulation changes (which will cost approximately \$50,000). However there are a small number of houses plus the school connected directly to the TDC mains in Champion Road that would need to be accommodated should NCC wish to take over full supply to this area. To connect these would require new reticulation to be installed at a cost of \$800,000-\$900,000. These costs would be offset over time by the income from the sale of water.
- 6.7 TDC have recently confirmed that they do not support any change to the current water supply arrangements in this area that would reduce their cash flow. In order for the ESA to progress Council officers recommend that Council agrees to continue the current supply arrangements for at least the first three-year period of this renewed ESA based on the following considerations:

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- The impending central government review of drinking water supply provisions across the country.
- The capital cost of new infrastructure.
- The undesirability of the duplication of services that would be required to supply water to the full area.

6.8 This section of the agreement currently expires on 30 June 2075. Either TDC or NCC can terminate the agreement with three years notice to the other party.

#### **Part B: Water Supply to Nelson Industrial Water Supply Area**

6.9 The Nelson Industrial Water Supply Area includes all of the buildings in the Raeward Fresh area, the Wakatu Industrial Estate, a number of properties off Saxton Road West and lower Nayland Road. These properties are invoiced directly by TDC under individual supply agreements and are not part of the NCC water supply activity.

6.10 TDC has historical supply agreements with both Alliance Group Ltd (Alliance) and Enzafoods New Zealand Ltd (ENZA) that expired on 30 June 2020. TDC has confirmed that they are happy to maintain the current supply agreement for this area.

6.11 For NCC to be able to supply the full water requirement to this area significant trunkmain upgrades will be required. This is expected to cost approximately \$1.5M. In the interests of wider network and community resilience a budget provision for the NCC-TDC link has been included in the LTP 2021-31 in years 2028/29-2031/32. With the pending outcome of the central government three waters review of water supply arrangements it is anticipated that the long term future water supply options for this area will become clearer over the term of the ESA and any budget adjustments will be made in the LTP 2024-34.

6.12 This section of the agreement expired on 30 June 2020. TDC is continuing to maintain the supply under the old conditions until the renewed agreement is in place.

6.13 Both TDC and NCC officers recommend the following conditions:

- TDC continues its current role as the primary water supplier to the Nelson Industrial Water Supply Area and charges customers directly.
- Align the expiry date of the Nelson Industrial Water Supply Area part of the ESA with the proposed ESA expiry (30 June 2075) and include the area in the three-year notice to cease supply option.
- Cost of water from TDC for this area to be based on the same terms and conditions that TDC applies from time to time to the



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majority of rating units with a metered connection in Richmond.

- Both councils will collaborate on any replacement trunkmain linking the two supplies to ensure transfer of water can occur in an emergency.

#### **Part C: Water Supply from NCC to TDC**

- 6.14 As part of the original funding agreement with central government for the construction of the Roding Dam NCC is required to supply up to 909m<sup>3</sup>/d or 1/15 of the permitted take from the Roding River to TDC. Currently TDC can terminate this arrangement with six months' notice in writing to NCC.
- 6.15 Both TDC and NCC officers recommend that the requirement for NCC to supply water to TDC from the Roding River under this part of the agreement expires upon the completion of the construction of the Waimea Community Dam and subject to NCC providing \$5M of funding to the Waimea Community Dam.

#### **Part D: Sewerage Services**

- 6.16 TDC provides limited sewerage services to properties across the territorial boundary adjacent to Champion Road. NCC has some sewerage reticulation within the road reserve of Champion Road. It would not be economical or helpful from a climate change perspective for either Council to completely separate and duplicate these services given the small number of properties served. The current ESA only references the TDC sewerage services and for completeness should be extended to include the NCC sewerage reticulation that crosses into Champion Road.
- 6.17 This section of the agreement currently expires on 30 June 2075. Either TDC or NCC can terminate the agreement with three years notice to the other party.
- 6.18 Both TDC and NCC recommend that the ESA be updated to record the current sewerage services.

### **7. Additional funding request**

- 7.1 TDC has requested that Council increase its contribution for the Dam from \$5M to \$10.474M (refer Attachment 5).
- 7.2 Council undertook a SCP in 2017/18 as part of its decision-making process to consider a contribution to the Dam. The SCP stated that:
- A grant was preferred to any purchase of equity as this would limit the risk to NCC ratepayers in the event of project cost overruns



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- Council would receive access to 22,000m<sup>3</sup>/day of water should it be required (The SCP noted that access to this water in the future would require Council to undertake major capital investment)
- The grant would be funded by a long-term loan and would result in an increase in general rates of 0.5%
- There were regional economic and water supply resilience benefits as well as environmental benefits and negative impacts.
- Nelson would secure long term continued water supply for south Nelson.

7.3 Following consultation, Council decided to make a grant of \$5M towards the costs of the Dam, subject to:

- The signing of a contract assuring Nelson's ongoing rights to access 22,000m<sup>3</sup>/day of water from the Waimea Aquifer; and
- The contract allowing for the grant to be transferred to a shareholding in the future.

7.4 Immediate shareholding was not supported as this might expose Council to cost over-runs and would also have required a contribution to operating costs before Council might want to access water from the Dam.

7.5 In relation to TDC's latest request three options have been considered:

Option 1 (recommended): Council notes that it decided in 2018 to contribute \$5M for the Waimea Dam, declines the request for additional funding and confirms the rights to water at 22,000m<sup>3</sup>/day as previously agreed.

Option 2: Council notes that it decided in 2018 to contribute \$5M for the Waimea Dam, declines the request to increase the grant to \$10.474M but agrees to undertake consultation on a proposal to accept a reduction in the volume of water that Council has access to from 22,000m<sup>3</sup>/day to 14,900m<sup>3</sup>/day in the Waimea Dam Funding Agreement.

Option 3: Council agrees to undertake consultation on a proposal to increase its grant for the Waimea Dam from \$5M to \$10.474M (an increase of \$5.474M).

#### **Assessment of Significance of the three options**

7.6 If Council supported a change to the current agreement with TDC then it must also consider the degree of significance of the change and the decision-making requirements of the LGA. This consideration informs whether any further engagement or consultation process is required.

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#### **Option 1 (recommended): Declines the request for additional funding and confirms the rights to water at 22,000m<sup>3</sup>/day as previously agreed.**

- 7.7 A decision to not amend the agreement would be of low significance. This reflects that the decision would be in line with the 2017/18 SOP and previous Council decisions and Council is already adequately informed of the views and preferences of the community in relation to this decision. Recent discussions with TDC indicate that they would agree to sign the funding agreement, subject to, as part of the ESA agreement:

- The Nelson Industrial Area continuing to be supplied and invoiced by TDC.
- No changes are to be made to the water supply arrangements for the Nelson Residential Water Supply Area as outlined in paragraph 6.7.

If Council supported this option consultation would not be necessary and the Waimea Community Dam Funding Agreement could be approved and the transfer of the \$5m could occur once both contracts were signed.

#### **Option 2 Declines the request for additional funding of \$5.474M and agrees to undertake consultation on reducing the rights to access water to 14,900m<sup>3</sup>/day.**

- 7.8 It is considered that agreeing to a reduction in the volume of water that NCC has access to from 22,000 m<sup>3</sup>/day to 14,900m<sup>3</sup>/day is a material change to the proposal that Council consulted on and is of medium significance when assessed against Council's Significance and Engagement Policy.
- 7.9 Although Council's most recent modelling of future water demand identifies that Nelson has sufficient water resources for the foreseeable future there are significant unknowns that impact the modelling results eg population growth increasing demand beyond the modelled assumptions, the impacts of natural hazards such as earthquakes on the local supply network and the longer term impacts of climate change on rainfall patterns and water demand. Access to an additional 22,000m<sup>3</sup>/day of water provides Nelson with a buffer against these unknowns and provides for the longer-term future when a further water source will be required in any event.
- 7.10 Reducing the amount of water from 22,000m<sup>3</sup>/day to 14,900m<sup>3</sup>/day simply provides the city with a lesser buffer.
- 7.11 Securing access to up to 22,000m<sup>3</sup>/day of water was identified as one of the benefits of Council's proposed contribution identified in the Statement of Proposal. On this basis, it has been determined that Council is likely not adequately informed of community views and

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preferences in relation to accepting a lower cap on the right to access water in exchange for the same amount of funding.

- 7.12 It is considered that the change is of medium significance in terms of Council's Significance and Engagement Policy for reasons including that:

7.12.1 Reducing the amount of water that Council has access to is unlikely to impact on the community or levels of service in the foreseeable future. The statement of proposal recorded that in exchange for its contribution, Nelson would gain access to an additional water source of up to 22,000m<sup>3</sup>/day should it be required;

7.12.2 There is no impact on rates or Council's debt levels associated with this proposal;

7.12.3 However, the decision is not readily reversible and may impact on future generations;

7.12.4 In addition, there a past history of the issue generating wide public interest within the region and is there a reasonable expectation that it would generate this interest now;

- 7.13 It is considered that despite the low anticipated impact of accepting a lower cap on Council's right to access water, the latter factors tilt the balance away from this being assessed as a decision of low significance, to being one of moderate significance.

- 7.14 Although Council could use a Special Consultative Procedure (SCP) for option two this is not required under the LGA. Section 97 of the LGA only requires an SCP if there is a significant change in the intended level of service for any significant activity or transfers the ownership or control of a strategic asset. Neither of these requirements are triggered if Council decided to reduce the volume of water it has access to.

- 7.15 Council could instead determine an appropriate consultation process, guided by Sections 78- 82 of the LGA, Council's Significance and Engagement policy and its knowledge of the public views from previous consultation and engagement on the Dam.

- 7.16 If Council supported this option a further report with a proposed engagement and consultation process would be brought back to Council for approval.

#### **Option 3 Providing an additional \$5.474M towards the costs of the Waimea Dam.**

- 7.17 Of the three options, this option is considered to have the highest level of significance. This reflects:

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- 7.17.1 That the original \$5M grant was based on the expected benefits to Nelson and was not linked or indexed to the total project costs. These benefits do not change even though the costs of the Dam have increased. An increase of \$5.474M in Council's contribution would be a material change from the 2017/18 proposal that Council consulted on.
- 7.17.2 The impact on Council's financial capacity and capability. Council's proposed 2021 Financial Strategy includes net debt increasing to \$290M by 2030/31. An increase of \$5.474M in debt may reduce Council's ability to respond to future projects and would also increase rates by 0.4% (for a loan over 40 years).
- 7.18 As referred to in Option 2 above the Council could use a SCP or could instead determine an appropriate consultation process under section 78-82 of the LGA.
- If Council supported this option a further report with a proposed engagement and consultation process would be brought back to Council for approval.
- 8. Waimea Community Dam Funding Agreement (Agreement)**
- 8.1 The Draft Agreement is attached (refer Attachment 7). If option 2 or 3 is adopted, it can't be signed until such time as public consultation has been undertaken and final decisions made.
- 8.2 A feature of the earlier Council resolutions is the requirement for NCC to have ongoing rights to access 22,000m<sup>3</sup>/day of water from the Waimea Aquifer and at some stage in the future the right to be able to convert the \$5M grant into shares in Waimea Water Limited should it wish to.
- 8.3 A consequence of the decision to make a grant to TDC for the construction of the Waimea Community Dam rather than immediately take up shares in Waimea Water Limited is that NCC would not be required to contribute to the ongoing operational costs of the dam.
- 8.4 TDC has raised a concern that this means NCC will be in the position of reserving access to its allowance of 22,000m<sup>3</sup>/day of water while avoiding contributing to operational costs for the asset that secures the water.
- 8.5 Notwithstanding previous agreements (refer Attachment 3 McKenzie/Hammond agreement for a 99 year term) discussions with TDC have confirmed its current view that the agreement should have a maximum term of 40 years before the terms and conditions need to be re-negotiated.
- 8.6 At the expiry of the 40 years NCC must either convert the grant into shares and begin contributing to the operational costs of the dam, access

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the water without becoming a shareholder or forfeit its rights to access the water from the Waimea Aquifer. The grant would not be refundable.

- 8.7 NCC officers are of the view that 40 years is acceptable for the following reasons:
- NCC and TDC will have a better understanding of population growth and climate change impacts on the supply and demand for water by this time.
  - Central Government initiatives to restructure Local Authority water supplies will be firmly bedded in by then.
  - The operating costs of the Waimea Dam will be well established and NCC will be able to make an informed decision on shareholding in Waimea Water Ltd.
- 8.8 Council's share of the estimated annual operating costs in today's terms is likely to be approximately 4.5% of \$2.5m to \$3.2m pa (\$112,500 to \$144,000pa).
- 8.9 Officers consider that agreeing to a 40 year term is not a material change from the proposal that Council consulted on with the public and therefore would not warrant any further consultation.
- 8.10 The 99 year term was included in supporting documentation for the consultation but did not form part of the Statement of Proposal. The Statement of Proposal did not stipulate a particular term length, but instead focussed on elements of the financial contribution and the benefits gained by Council. In addition, Council's subsequent resolutions dated 15 May 2018 and 27 November 2018 did not stipulate the 99 term length as a condition of the agreement.
- 8.11 It is considered that, in the wider context of the funding agreement, 40 years is long term and not materially different from 99 years. Relevant context for this assessment includes that the consent term for the Dam is 35 years (and there is no guarantee that they could continue beyond that point given TDC is unable to bind itself in its regulatory capacity); and the length of term becomes irrelevant if Council takes up its share option.
- 8.12 The change is assessed as being of low significance in terms of Council's Significance and Engagement Policy with no discernible impact on levels of service, debt, rates or the community in the near future (given the matters outlined above).
- 8.13 During the final negotiations of the Three Waters Reform clauses TDC agreed to remove the ten year restriction on the share option on the proviso that NCC agreed to restricted use of voting rights in the first 10 years and particularly in relation to the three waters reforms. This is favourable to Council.

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- 8.14 The Agreement includes the key terms confirmed by Council resolution on 27 November 2018 (notwithstanding the removal of the ten year restriction from the share option clause) and includes key clauses on Access to Water and Three Waters Reform.
- 8.15 In summary, the key terms of the Agreement are:
- 8.15.1 NCC agrees to pay TDC the non-refundable amount of \$5M on a specified date;
  - 8.15.2 TDC grants NCC the rights to affiliate permits for up to the agreed amount of water (22,000m<sup>3</sup>/day);
  - 8.15.3 NCC's ability to access this water is subject to obtaining the necessary resource consents under the Tasman Resource Management Plan and capital investment in any necessary infrastructure (refer to Attachment 6 for flowchart showing possible scenarios for Council to obtain water as a result of right to affiliate permits);
  - 8.15.4 There are positive and negative obligations on TDC in its capacity as shareholder of WWL to protect NCC's interests under the Agreement;
  - 8.15.5 Nothing in the Agreement interferes with TDC's exercise of its regulatory functions;
  - 8.15.6 At any time NCC may request that TDC transfer to NCC shares in WWL to enable access to the agreed amount of water (22,000m<sup>3</sup>/day);
  - 8.15.7 The Agreement is subject to a 40 year term. NCC must capitalise on the water allocation or share option within this time period or lose any rights under the Agreement.

## 9. Options

- 9.1 NCC and TDC officers have reviewed the details of the proposed ESA set out in this report and they both consider it reflects mutually agreed common ground. Council has the option to either approve the revised ESA or not approve it.

Option 1: Approve renewed ESA (recommended option)	
Advantages	<ul style="list-style-type: none"><li>• Allows continued supply of essential services across the territorial authority boundary.</li><li>• Improves resilience of supply to the residential area.</li></ul>

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	<ul style="list-style-type: none"> <li>Allows capital expenditure to be spread across future years.</li> </ul>
Risks and Disadvantages	<ul style="list-style-type: none"> <li>None.</li> </ul>
<b>Option 2: Not Approve renewed ESA</b>	
Advantages	<ul style="list-style-type: none"> <li>No additional officer time required to complete the drafting of the new ESA.</li> </ul>
Risks and Disadvantages	<ul style="list-style-type: none"> <li>No improved resilience in the network.</li> <li>The ESA for the water supply to the industrial area terminated on 30 June 2020. NCC might have to commit to extensive capital works immediately in order to maintain continuity of supply to the area.</li> </ul>

### Options for Additional funding request

<b>Option 1: Council notes that it decided in 2018 to contribute \$5M for the Waimea Dam, declines the request for additional funding and confirms the rights to water at 22,000m<sup>3</sup>/day as previously agreed (Recommended option).</b>	
Advantages	<ul style="list-style-type: none"> <li>Is aligned with previous Council decisions.</li> <li>Does not require an increase in debt or rates/charges.</li> <li>Provides a higher level of water resilience for Nelson, compared to option one.</li> <li>Does not require another consultation process given Council is already adequately informed of community views and preference.</li> <li>Enables the ESA and Waimea Dam Agreement to be finalised (subject to agreement by TDC).</li> </ul>
Risks and Disadvantages	<ul style="list-style-type: none"> <li>Council could be seen to not support a regionally important project that has increased in cost.</li> <li>Is not aligned with TDC's request for additional funding and requires TDC's agreement.</li> </ul>
<b>Option 2: Council maintains its decision to contribute \$5M to the Waimea Dam, declines the request to increase the grant to</b>	



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### Item 1: Nelson City Council - Tasman District Council Engineering Services Agreement and Nelson City Council - Tasman District Council Waimea Community Dam Funding Agreement

<b>\$10.474M but, agrees to undertake consultation on a reduction in the volume of water that Council has access to from 22,000m<sup>3</sup>/day to 14,900m<sup>3</sup>/day in the Waimea Dam Funding Agreement.</b>	
Advantages	<ul style="list-style-type: none"> <li>• Council's debt and overall rates/charges would not increase.</li> <li>• Provides increased water resiliency for Nelson (although at a lower level than options one and three).</li> <li>• Demonstrates Council support for the regional water supply resilience and economic benefits to be provided by the dam.</li> <li>• Maintains Nelson's right to access water up to a level anticipated to still exceed its needs both now and into the foreseeable future.</li> </ul>
Risks and Disadvantages	<ul style="list-style-type: none"> <li>• Council could be seen to not sufficiently support a regionally important project.</li> <li>• Is not aligned with TDC's request and requires acceptance by TDC.</li> <li>• Would require another consultation process to enable Council to be adequately informed of community views and preferences on the proposal, which would delay finalisation of the funding agreement.</li> <li>• Involves a decreased right to access water for the Nelson region.</li> </ul>
<b>Option 3: Council agrees to undertake consultation on increasing its grant to the Waimea Dam from \$5M to \$10.474M (an increase of \$5.474M) and retains water rights of 22,000m<sup>3</sup>/day.</b>	
Advantages	<ul style="list-style-type: none"> <li>• Demonstrates Council support for the water and economic benefits to be provided by the dam to the region.</li> <li>• Provides a higher level of water resilience for Nelson, compared to option two.</li> <li>• Is aligned with TDC's request.</li> </ul>
Risks and Disadvantages	<ul style="list-style-type: none"> <li>• Increases Council's debt and rates to Nelson residents and businesses, and therefore constrains future capital expenditure.</li> <li>• Increases ratepayer funding for limited extra benefit.</li> <li>• Annual impact on rates of \$300,000 being interest and repayment of loan over 40 years</li> </ul>

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	<ul style="list-style-type: none"><li>• Would require another consultation process to enable Council to be adequately informed of community views and preferences on the proposal, which would delay finalisation of the funding agreement</li></ul>
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#### 10. Funding of the \$5M grant towards the Dam

- 10.1 The 2017/18 proposal to contribute to the Dam was on the basis that the repayment of the capital grant would be through general rates, this reflected the mix of benefits (regional economic benefit, less water reticulation needed to supply Nelson South industrial area and delaying the pre-treatment of Maitai Dam water/more regular replacement of membranes) from the Dam.
- 10.2 However, officers now propose that the budgeted capital grant loan be transferred from the Economic activity to the Water activity. This better reflects the longer-term benefits to Council of the continued supply of water to south Nelson by TDC and the overall improvement to water supply resilience.

#### Effect on rates and water charges

- 10.3 Most ratepayers also pay water charges. However, there will be some water customers who do not directly pay general rates, for example residents who pay rent, but have in their rental agreements that they are responsible for water charges. These residents indirectly pay rates through their rent payments. The impact on water charges of transferring the loan is low. Water charges would increase by \$3.55 p.a. in fixed charges and 4 cents per cubic metre. General rates would decrease across the city by \$271,000 (0.34%).
- 10.4 Transferring the loan from the Economic to the Water activity is considered as being of low significance and no consultation is proposed.

#### 11. Conclusion

- 11.1 NCC and TDC supply engineering services across the territorial authority boundary along Champion Road. As a result of changes in the water supply environment the ESA governing these needs to be re-negotiated.
- 11.2 In order for NCC support for the construction of the Waimea Community Dam to continue NCC and TDC must complete an agreement that sets out the terms and conditions of Council's funding for the project.

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**Authors:**       **Alec Louverdis, Group Manager Infrastructure**  
                      **Nikki Harrison, Group Manager Corporate Services**

### **Attachments**

Attachment 1: A1382534 NCC - TDC Engineering Services Agreement 2015

Attachment 2: A1730382 NCC - TDC Nelson Residential Water Supply Area 2017

Attachment 3: A1844948 NCC - TDC Agreement to Review Engineering Services Agreement 2017

Attachment 4: A2518793 Draft NCC - TDC Engineering Services Agreement 2021

Attachment 5: A2602923 Request from TDC for additional funding for Waimea Community Dam 01March2021

Attachment 6: A2618282 Possible scenarios for Council to obtain water

Attachment 7: A2618446 Waimea Community Dam Funding Agreement

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### **Important considerations for decision making**

#### **1. Fit with Purpose of Local Government**

The NCC-TDC ESA and the NCC-TDC Waimea Community Dam Funding Agreement responds to Council's broad role in 'promoting the social, economic, environmental and cultural well-being of the community' by maintaining an efficient delivery of the three water utility services to the south Nelson community and contributing to a regional water supply project that will deliver economic and water supply benefits to the city.

#### **2. Consistency with Community Outcomes and Council Policy**

The three water utility services support the delivery of the following Council Community Outcomes:

- Our infrastructure is efficient, cost effective and meets current and future needs
- Our communities are healthy, safe, inclusive and resilient

#### **3. Risk**

The recommendations in the report will lead to a reduction in the current risk profile for water supply to the south Nelson residential and industrial water supply areas.

There are some risks to each of the options in response to TDC's request to increase funding, these are:

- Reputational risk from not increasing financial support for an important regional project. On the other hand, there is also a reputational risk if Council increased funding as the 2017/18 SOP limited Council's contribution to the project and through not taking a shareholding position, removed the risk of Council and ratepayers being exposed to cost-overruns.
- The risk of a challenge of the decision to transfer the contribution from the economic activity to the water activity.

#### **4. Financial impact**

There are future financial implications that will be identified in the next Long Term Plan 2021-31.

The financial impact of transferring the Dam grant from the Economic activity to the Water activity is covered in the body of the report.

#### **5. Degree of significance and level of engagement**

**ESA**

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The ESA is of low significance because Council is the primary supplier of drinking water to the community. No community consultation is required on the proposed renewal of the ESA because of the following:

- Proposed capital expenditure and water supply charges are set out in Annual and Long-Term Plans which have been consulted on.
- There are no changes proposed to the day-to-day administration of customer invoicing and queries for the residential and industrial areas water utilities.

#### **Waimea Community Dam**

The proposed contribution of \$5M to the Waimea Dam was of high significance and was accordingly the subject of a special consultative process in 2018. The 40 year term is not considered to be significant because:

- Council will still be responsible for any decisions about shareholding in the dam at that point.
- There will be sufficient time to gather all necessary information for Council to make an informed decision.

The degree of significance of each of the options in response to TDC requesting that Council increase its contribution to the Dam is covered in the body of the report.

#### **6. Climate Impact**

The ESA recognises the cross-boundary engineering services in the south Nelson area. Maximising the service life of these services acts to mitigate the impact of climate change by reducing the emission of greenhouse gases that arise from the unnecessary duplication of networks and abandoning still viable pipelines. Council also has a regional leadership role in promoting the wise use of existing networks that maximise service life of assets.

#### **7. Inclusion of Māori in the decision making process**

No engagement with Māori has been undertaken in preparing this report.

#### **8. Delegations**

##### **ESA**

Because the ESA and Waimea Dam agreement are linked the issue covers both the Infrastructure Committee and Council. The matter is therefore being brought to Council for a decision.

##### **Waimea Dam**

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The issue of satisfactory contract arrangements for the Waimea Dam funding is a direct Council decision arising from its meetings of 15 May 2018 and 27 November 2018.

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23Aug2021



# Engineering Services Agreement

BETWEEN

TASMAN DISTRICT COUNCIL

AND

NELSON CITY COUNCIL

## Engineering Services Agreement

**Between** TASMAN DISTRICT COUNCIL (TDC)

**And** NELSON CITY COUNCIL (NCC)

### BACKGROUND

- A. On or about 19 September 2005 TDC and NCC entered into an engineering services agreement.
- B. The 2005 agreement set out the rights and obligations of the parties in relation to:
- (i) the supply of water by TDC to certain properties in Nelson, situated on the north side of Champion Road, and Hill Street North, and in the Wakatu Industrial Estate;
  - (ii) the supply of water by NCC to TDC from the Roding Headworks;
  - (iii) the provision of sewerage services from TDC to certain properties in Nelson, situated on the north side of Champion Road; and
  - (iv) upgrades to Champion Road, Richmond as a result of development in Nelson.
- C. The 2005 agreement, as varied by exchange of letters between the parties, expires on 30 June 2015 and the parties wish to enter into a new agreement.
- D. The parties have agreed that:
- (i) Subject to approval by both NCC and TDC following public consultation, NCC will take over responsibility for supplying water to some of the properties in Nelson that are currently supplied by TDC, and TDC will supply water to NCC for this purpose on the terms set out in this agreement;
  - (ii) NCC will continue to supply TDC with water from the Roding Headworks on the terms set out in this agreement; and
  - (iii) TDC will continue to supply water and sewerage services to certain properties in Nelson on the terms set out in this agreement.

### IT IS AGREED

TDC and NCC covenant as follows:

#### 1. Interpretation

1.1 In this Agreement, unless the context otherwise requires:

Agreement	means this Agreement, and includes any Schedules annexed to this Agreement and any variations to this Agreement agreed to by the parties in writing
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GST	means all that tax from time to time payable under the Goods and Services Tax Act 1985 as amended from time to time, and any legislation enacted in substitution for that Act
NCC	means Nelson City Council, and includes its successors
Nelson Industrial Water Supply Area	means all the land shaded blue on the plan attached to this Agreement as Schedule 4
Nelson Residential Water Supply Area	means all the land shaded blue on the plan attached to this Agreement as Schedule 1
Nelson Sewerage Services Area	means all the land shaded red on the plan attached to this Agreement as Schedule 6
Parties	means the parties to this Agreement
Person	includes an individual, the Crown, a corporation sole and any body of persons (whether corporate or unincorporated)
Schedule	means a schedule to this Agreement
TDC	means Tasman District Council, and includes its successors
Waterworks (Residential area)	means the Residential Water Supply Assets described in Schedule 3 of this Agreement
Working Day	means any day of the week other than: <ul style="list-style-type: none"> <li>(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's Birthday, Waitangi Day and Nelson Anniversary Day; and</li> <li>(b) a day in the period commencing with the 25<sup>th</sup> day of December in any year and ending with the 5<sup>th</sup> day of January in the following year.</li> </ul>

1.2 In this Agreement, unless the context otherwise requires:

- (a) Words importing the singular shall include the plural and vice versa;
- (b) Any Schedule to this Agreement shall have the same effect as if set out in the body of this Agreement;
- (c) Clause headings are inserted for reference only and shall not affect the interpretation of this Agreement;
- (d) Words or expressions that are defined are indicated by capital letters for convenience. The absence of a capital letter shall not alone imply that the

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word or expression is used with a different meaning from that given by its definition;

- (e) References to statutes, regulations and rules, includes that legislation as amended from time to time and any legislation in substitution therefor.

- 1.3 The parties acknowledge that this Agreement is a joint local government arrangement, as defined in section 137 Local Government Act 2002.

**PART A: WATER SUPPLY TO NELSON RESIDENTIAL WATER SUPPLY AREA**

**2. Condition and Term of Part A**

- 2.1 Part A of this Agreement is conditional upon both NCC and TDC approving the terms of the arrangement for the supply of water set out in Part A of this Agreement by 1 July 2015 after undertaking consultation on the proposed arrangement as part of the consultation on their Long Term Plans 2015-2025.

- 2.2 If the condition in clause 2.1 of this Agreement is not fulfilled by the date for fulfilment then at any time before the condition is fulfilled either party may, by notice in writing to the other party, cancel Part A of this Agreement and neither party shall have any right or claim against the other arising out of the cancellation of Part A of this Agreement.

- 2.3 If Part A of this Agreement is cancelled pursuant to clause 2.2:

- (a) TDC shall continue to supply water by network reticulation to all land within the Nelson Residential Water Supply Area and the provisions of Part B of this Agreement shall apply, with all necessary changes, to such supply; and
- (b) all other parts of this Agreement shall continue in full force and effect.

- 2.4 The rights and obligations of the parties under Part A of this Agreement shall commence on 1 July 2015 (**Part A Commencement Date**) and shall expire on 30 June 2075 subject to earlier termination in accordance with Part A or Part E of this Agreement (**the Part A Term**).

**3. Supply**

- 3.1 During the Part A Term NCC shall be responsible for supplying water by network reticulation to all land within the Nelson Residential Water Supply Area.

- 3.2 Subject to clauses 3.3, 5.1, 5.2, and 23.1, during the Part A Term TDC shall supply to NCC, and NCC shall purchase from TDC, the majority of the water that NCC uses to supply the Nelson Residential Water Supply Area on the terms set out in this Agreement.

- 3.3 At any time during the Part A Term NCC may stop using water from TDC to supply all or part of the land within the Nelson Residential Water Supply Area if NCC has given TDC at least three years prior notice in writing. Upon expiry of the notice period the rights and obligations of the parties under Part A of this Agreement shall terminate. All other parts of this Agreement, which have not previously been cancelled in accordance with this Agreement, shall continue in full force and effect.

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#### 4. Price

- 4.1 NCC shall pay TDC for water supplied by TDC pursuant to clause 3.2. In each and every rating year during the Part A Term, commencing on 1 July 2015, the amount payable by NCC to TDC for each cubic metre of water supplied by TDC to NCC shall be calculated in accordance with the following formula (subject to review in accordance with clause 4.3):

water rate x 0.7 x 365 = \$X

water supply services charge = \$Y

\$X + \$Y + \$U (if any) = \$Z

$\frac{\$Z}{(0.7 \times 365)}$  plus GST = amount payable for each cubic metre of water supplied by TDC

- 4.2 In clause 4.1:

- (a) **water rate** is the water rate per cubic metre of water supplied, that is levied or charged by TDC from time to time on the majority of rating units with a metered connection in Richmond; and
- (b) **water supply services charge** is the fixed annual amount for supply of water that is levied or charged by TDC from time to time on the majority of rating units with a metered connection in Richmond; and
- (c) **'U'** is the total annual amount (if any) of the targeted rate, or fees and charges, levied or charged by TDC from time to time on the majority of rating units with a metered connection in Richmond for the purpose of funding the capital and/or operating and/or environmental cost of a Waimea Community Dam, or other significant project to meet the demand for water in Richmond.

- 4.3 The formula set out in clause 4.1 of this Agreement is based on water consumption of 700 litres per day by each of the 475 lots in the Nelson Residential Water Supply Area, which is the reason for the reference to '0.7' (**the daily consumption figure**) whenever it occurs in the said formula. On or about 1 November 2016, and every two years thereafter during the Part A Term, TDC may review the average daily water consumption by each of the 475 lots, and increase or decrease the daily consumption figure by notice in writing to NCC by the end of December to reflect any changes. This will allow sufficient time for both Councils to have the changes included in their respective Annual Plans or Long Term Plans. The new daily consumption figure shall be used to calculate:

- (a) the annual water rate payable by NCC to TDC in the rating year commencing on 1 July following the date of the notice; and
- (b) the maximum daily allowance under clause 5.1 of this Agreement applicable from 1 July following the date of the notice. The maximum daily allowance shall be calculated by multiplying 475 by the new daily consumption figure.



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- 4.4 TDC shall notify NCC by the end of December in each year during the Part A Term if TDC proposes to levy or charge the rates, fees or charges described as 'U' in clause 4.2 in the following financial year. This will allow sufficient time for NCC to include the proposed charges in its Annual Plan or Long Term Plan.
- 4.5 If at any time NCC proposes to pay TDC a monetary contribution towards the capital cost of a Waimea Community Dam, or other significant project to meet the demand for water in Richmond, then prior to NCC making a decision on such proposal NCC and TDC shall meet to consider whether the amount 'U' in the formula set out in clause 4.1 will be varied, and the period of any such variation, if NCC pays the proposed monetary contribution.
- 4.6 The quantity of water supplied to NCC shall be measured at the water meters described in clause 7.1 of this Agreement.
- 4.7 TDC will submit a tax invoice to NCC at the beginning of each month for water supplied by TDC pursuant to this Agreement. NCC will pay TDC on the 20<sup>th</sup> day of the month following the date of the invoice.
- 4.8 If NCC shall fail to pay an invoice submitted by TDC under clause 4.7 by the due date for payment, NCC shall pay TDC interest on the outstanding amount from the due date for payment until the date of repayment at an annual rate that is 5% above the Reserve Bank of New Zealand 90 Day Bank Bill Rate on the due date for payment (or the next Working Day if no rate is published on the due date).
- 4.9 Annually during the Part A Term NCC shall notify TDC of the number of rating units within the Nelson Residential Water Supply Area.
5. **Quantity and Pressure**
- 5.1 Subject to clause 5.4, TDC is not required to sell to NCC, and NCC is not required to purchase, more than 330 cubic metres of water per day (**maximum daily allowance**) (subject to review in accordance with clause 4.3). It is intended that water supplied for the purpose of fire fighting within the Nelson Residential Water Supply Area is not included in the maximum daily allowance.
- 5.2 At any time during the Part A Term TDC may reduce the maximum daily allowance under clause 5.1 if TDC has given NCC at least three years prior written notice.
- 5.3 Subject to clause 23.1, TDC shall supply water to NCC under this Agreement at the following minimum pressure at the water meters described in clause 7.2: 300 kPa
- 5.4 Subject to clause 23.1, TDC shall supply NCC with sufficient quantity of water for the purpose of firefighting within the Nelson Residential Water Supply Area to comply with the minimum water volume for fire fighting in urban districts recommended in the New Zealand Fire Service Firefighting Water Supplies Code of Practice 2008 and all Codes of Practice issued by the New Zealand Fire Service in amendment of, or substitution for, the same.
- 5.5 If at any time during the Part A Term TDC imposes a restriction on the use of water in Richmond:
- (a) by public notice in accordance with its Water Supply Bylaw 2009, as amended from time to time, or any bylaw in substitution; or

- (b) in order to comply with the Tasman Resource Management Plan (as amended from time to time, or anything in substitution thereof), or a water shortage direction imposed under the Resource Management Act 1991 (as amended from time to time, or anything in substitution thereof); or
- (c) in order to comply with the conditions of any water permit applicable to the supply of water to the Nelson Residential Water Supply Area;

then NCC shall immediately use its best endeavours to impose equivalent restrictions on all properties within the Nelson Residential Water Supply Area for the duration of the restriction imposed by TDC.

#### 6. **Quality**

- 6.1 The water supplied by TDC to NCC pursuant to Part A of this Agreement shall comply with the water quality standards for drinking water set out in the New Zealand Drinking Water Standards for New Zealand 2005 (Revised 2008).

#### 7. **Supply points and meters**

- 7.1 TDC shall supply water to NCC pursuant to Part A of this Agreement at the water supply points marked on the plan attached as Schedule 2, and such other water supply points as are agreed to in writing by NCC and TDC.
- 7.2 TDC will ensure that there is a water meter and back flow prevention located at each of the water supply points.
- 7.3 TDC shall be responsible for calibration and maintenance of the water meters and back flow prevention described in clause 7.2. Both parties are entitled to check the water meters for accuracy.
- 7.4 TDC shall read the water meters each month to determine the quantity of water used by NCC. If any of the water meters in clause 7.2 shall cease to register correctly, the quantity of water passing through it shall be estimated, based on readings from the same period in the previous year. If such readings are not available then the estimate will be based on readings from the month immediately preceding the malfunction.
- 7.5 Water supplied by TDC to NCC under Part A of this Agreement shall be at NCC's risk once the water has passed through the water meter and backflow assembly described in clause 7.2.
- 7.6 Charges made for any water lost as a result of a leak or failure of the water meter or backflow assembly will be adjusted by TDC to reflect the volume of water estimated to have been lost.

#### 8. **Transfer of Waterworks**

- 8.1 Upon the Part A Commencement Date TDC shall sell to NCC, and NCC shall purchase, the Waterworks (Residential area) listed in Schedule 3 of this Agreement.
- 8.2 The purchase price of the Waterworks (Residential area) shall be \$1.00 plus GST, (receipt of which is acknowledged by TDC).





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8.3 Ownership of the Waterworks (Residential area) shall transfer from TDC to NCC upon the Part A Commencement Date.

8.4 The Waterworks (Residential area) shall remain at TDC's risk until ownership passes. When ownership passes to NCC the Waterworks (Residential area) shall be at NCC's risk.

9. **Consumer Guarantees Act**

9.1 The parties agree that NCC is acquiring water, and the Waterworks (Residential Area), under this Agreement for the purposes of a business (as defined in the Consumer Guarantees Act 1993) and that the provisions of the Consumer Guarantees Act 1991 do not apply to the sale and purchase of water, and the Waterworks (Residential Area), pursuant to this Agreement.

**PART B: WATER SUPPLY TO NELSON INDUSTRIAL WATER SUPPLY AREA**

10. **Term of Part B**

10.1 Part B of this Agreement shall commence on 1 July 2015 and shall expire on 30 June 2020, subject to earlier termination in accordance with Part E of this Agreement (**The Part B Term**).

11. **Supply**

11.1 During the Part B Term TDC shall supply water by network reticulation to all land within the Nelson Industrial Water Supply Area that TDC supplies with water by network reticulation as at the date of this Agreement, on such terms and conditions as TDC thinks fit.

11.2 TDC shall directly invoice users of water supplied pursuant to clause 11.1.

11.3 NCC shall allow TDC, its employees, contractors and agents to enter onto land owned by NCC at any time to carry out maintenance of the network reticulation referred to in clause 11.1.

**PART C: WATER SUPPLY FROM NCC TO TDC**

12. **Term of Part C**

12.1 Part C of this Agreement shall commence on 1 July 2015 and shall expire on 30 June 2075, subject to earlier termination in accordance with Part C or Part E of this Agreement (**The Part C Term**).

12.2 Either Party may terminate Part C of this Agreement by notice in writing to the other party if NCC's resource consent to take water from the Roding Headworks as at the date of this Agreement expires, and is not renewed. Upon termination the rights and obligations of the parties under part C of this Agreement shall cease, without prejudice to the rights and remedies of either party against the other for any prior breach of Part C of this Agreement. All other parts of this Agreement, which have not previously been cancelled in accordance with this Agreement, shall continue in full force and effect.

12.3 TDC may terminate Part C of this Agreement at any time by 6 month's notice in writing to NCC if TDC decides that it no longer wishes to take water from the Roding Headworks. Upon expiry of the notice period the rights and obligations of the parties under part C of this Agreement shall cease, without prejudice to the rights and remedies of either party against the other for any prior breach of Part C of this Agreement. All other parts of this Agreement, which have not previously been cancelled in accordance with this Agreement, shall continue in full force and effect.

**13. Supply**

13.1 Subject to clauses 13.2, 15.1 and 23.1, during the Part C Term NCC shall supply water to TDC from the Roding Headworks, and TDC shall purchase such water, on the terms set out in this Agreement.

13.2 TDC shall use water supplied by NCC from the Roding Headworks with sufficient frequency and volume to ensure the water in the pipeline meets the requirements of the water quality standards for drinking water set out in the New Zealand Drinking Water Standards for New Zealand 2005 (Revised 2008), but otherwise there is no obligation on TDC to use such water.

**14. Price**

14.1 The price payable by TDC to NCC for water supplied under clause 13.1 shall be calculated in accordance with the formula set out in Schedule 5 of this Agreement.

14.2 On or about 1 November in each year during the Part C Term NCC may, after consultation with TDC, review the operations and maintenance costs, and depreciation costs, described in Schedule 5 of this Agreement that are used to calculate the Fixed and Variable Charges in accordance with the formula set out in that Schedule. Following review, NCC shall give written notice to TDC specifying the new Fixed and Variable Charges by the end of December to allow sufficient time for both Councils to have the changes included in their respective Annual Plans and Long Term Plans. The new Fixed and Variable Charges shall come into effect on the 1st day of July following the date of NCC's notice.

14.3 If, as a result of any review under clause 14.2, NCC increases either the Fixed or the Variable Charge by an amount that is greater than 4% of the charge payable in the preceding year then TDC may cancel Part C of this Agreement by three months' notice in writing to NCC. Upon expiry of the notice period the rights and obligations of the parties under part C of this Agreement shall cease, without prejudice to the rights and remedies of either party against the other for any prior breach of Part C of this Agreement. All other parts of this Agreement, which have not previously been cancelled in accordance with this Agreement, shall continue in full force and effect.

14.4 The price payable by TDC to NCC for water pursuant to Part C of this Agreement includes TDC's contribution to the operation and maintenance costs of the Roding Headworks and the Roding Trunk Main System.

14.5 The quantity of water used by TDC shall be measured at the water meter described in clause 17.2 of this Agreement.

14.6 NCC will submit a tax invoice to TDC each month for water supplied by NCC pursuant to this Agreement. TDC will pay NCC on the 20<sup>th</sup> day of the month following the date of the invoice.



Item 1: Nelson City Council - Tasman District Council Engineering Services Agreement and  
Nelson City Council - Tasman District Council Waimea Community Dam Funding  
Agreement: Attachment 1

14.7 If TDC shall fail to pay an invoice submitted by NCC under clause 14.6 by the due date for payment, TDC shall pay NCC interest on the outstanding amount at an annual rate that is 5% above the Reserve Bank of New Zealand 90 Day Bank Bill Rate on the due date for payment (or the next Working Day if no rate is published on the due date).

15. **Quantity and pressure**

15.1 NCC shall supply water to TDC from the Roding Headworks at the rate of 909 cubic metres per day or 1/15<sup>th</sup> of the authorised daily abstraction from the Roding Headworks, whichever is the lesser (**daily entitlement limit**).

15.2 Any water supply to TDC above the daily entitlement limit is completely at the discretion of NCC. Any additional water that NCC chooses to supply to TDC will be charged for at the same rate that NCC charges from time to time for water that NCC supplies to the majority of rating units with a metered connection in Nelson.

15.3 In the event of a low river flow causing a reduced abstraction from the Roding Headworks, NCC will advise TDC of TDC's share of the authorised daily abstraction and check the flow meter at least weekly. In turn, TDC will ensure that this daily allowable take is not exceeded, without NCC's express consent, by controlling the relevant equipment.

15.4 Subject to clause 23.1 NCC shall supply water to TDC under this Agreement at the following pressure: minimum 300kPa.

16. **Quality**

16.1 The water supplied by NCC to TDC pursuant to this Agreement shall comply with the water quality standards for drinking water set out in the New Zealand Drinking Water Standards for New Zealand 2005 (Revised 2008).

17. **Supply points and meters**

17.1 NCC will supply water to TDC pursuant to this Agreement at the intersection of Champion Road and Salisbury Road, Richmond.

17.2 NCC will ensure that a water meter, and backflow prevention, is located at the water supply point described in clause 17.1.

17.3 NCC shall be responsible for calibrating and maintaining the water meter and backflow prevention described in clause 17.2. Both parties are entitled to test the meter for accuracy.

17.4 NCC shall read the water meters each month to determine the quantity of water used by TDC. If the water meter in clause 17.2 shall cease to register correctly, the quantity of water passing through it shall be estimated, based on readings from the same period in the previous year. If such readings are not available then the estimate will be based on readings from the month immediately preceding the malfunction.

17.5 Water supplied by NCC to TDC under this Agreement shall be at TDC's risk once the water has passed through the water meter and backflow assembly described in clause 17.2.





- 17.6 Charges made for any water lost as a result of a leak or failure of the water meter or backflow assembly will be adjusted by NCC to reflect the volume of water estimated to have been lost.

**18. Consumer Guarantees Act**

- 18.1 The parties agree that TDC is acquiring water under this Agreement for the purposes of a business (as defined in the Consumer Guarantees Act 1993) and that the provisions of the Consumer Guarantees Act 1991 do not apply to the sale and purchase of water pursuant to this Agreement.

**PART D: SEWERAGE SERVICES**

**19. Term of Part D**

- 19.1 Part D of this Agreement shall commence on 1 July 2015 and shall expire on 30 June 2075, subject to earlier termination in accordance with Part E of this Agreement (**The Part D Term**).

**20. Sewerage services**

- 20.1 During the Part D Term TDC shall provide sewerage reticulation to all land within the Nelson Sewerage Services Area that TDC provides sewerage services to as at the date of this Agreement, on such terms and conditions as TDC thinks fit.
- 20.2 TDC shall be responsible for maintenance of that part of the sewerage reticulation described in clause 20.1 that is within road.

**PART E: MISCELLANEOUS RIGHTS AND OBLIGATIONS**

**21. Term of Part E**

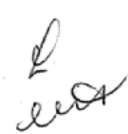
- 21.1 Part E of this Agreement shall commence on the date this Agreement is signed by both parties and shall expire on 30 June 2075, subject to earlier termination in accordance with this Agreement.

**22. Assignment and subcontracting**

- 22.1 Neither Party shall assign its rights or obligations under this Agreement to any Person.
- 22.2 Subject to clause 22.3 neither Party shall subcontract all or part of its obligations under this Agreement to any Person without the prior written consent of the other Party.
- 22.3 Either Party may subcontract their maintenance obligations under this agreement to any Person, but the subcontracting of such obligations shall not relieve that Party from any liability or obligation under this agreement.

**23. Shut downs**

- 23.1 Either Party may reduce the volume or pressure of water supplied to the other Party pursuant to this Agreement for the purposes of carrying out maintenance of waterworks, and for such period as the maintenance works are carried out, provided



Item 1: Nelson City Council - Tasman District Council Engineering Services Agreement and  
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the Party wishing to reduce the supply of water has given 1 weeks prior notice in writing to the other Party.

**24. Termination**

24.1 Either Party may terminate this Agreement by written notice to the other Party if:

- (a) The other party fails to comply with a term of this Agreement and, where such breach is capable of being remedied, the other Party fails to remedy the breach within 28 days after receiving a written notice from the terminating Party specifying the breach and requiring it to be remedied; or
- (b) The other Party fails to comply with a term of this Agreement and such breach is not capable of being remedied.

24.2 Subject to clause 24.3, TDC or NCC may terminate this Agreement, or Part A, B, C or D of this Agreement, at any time by three year's notice in writing to the other party. TDC or NCC may terminate this Agreement or a Part of this Agreement pursuant to this clause for any reason including, but not limited to, TDC deciding to construct, or not to construct, a Waimea Community dam in the Lee Valley. If TDC or NCC only terminate a Part of this Agreement under this clause then other parts of this Agreement which have not previously been cancelled, shall continue in full force and effect.

24.3 NCC shall not terminate Part C of this Agreement except in accordance with clause 12.2 of this Agreement.

24.4 Termination of this Agreement by either Party for any reason shall be without prejudice to the rights and remedies of that Party against the other Party.

**25. Development Contributions**

25.1 If NCC terminates all or part of this Agreement then TDC is not liable to pay NCC the amount of any development contributions (as defined in section 197 Local Government Act 2002) or water connection charges that have been paid to TDC as a result of any development, building, or service connection within the Nelson Residential Water Supply Area.

25.2 If TDC terminates all or part of this Agreement and ceases to supply water to the Nelson Residential Water Supply Area then TDC shall promptly refund to NCC a portion of the development contributions (as defined in section 197 Local Government Act 2002) and water connection charges that have been paid to TDC as a result of any development, building, or service connection within the Nelson Residential Water Supply Area, using a straight line depreciation from the date the charges were paid to TDC until 30 June 2075 . The amount payable to NCC is the remaining value of the development contributions and water connection charges shown by this straight line depreciation, as at the date of termination.

**26. Force majeure**

26.1 Notwithstanding any provision to the contrary in this Agreement, whether expressed or implied, a Party shall not be liable for failure to perform any of its obligations under this Agreement where such failure is caused by an event beyond that Party's reasonable control including, but not limited to, power stoppages, acts of God, war,



lightning, fire, earthquake, storm, flood, explosion, or act of terrorism (**force majeure event**).

26.2 If any Party is affected by a force majeure event it shall immediately notify the other Party of the occurrence of the event and the expected duration of the event.

26.3 Either Party may terminate this Agreement by giving the other party one month's written notice if a failure by the other Party to perform its obligations in the circumstances referred to in clause 26.1 continues for a period of more than three months.

27. **Non-waiver**

27.1 Any delay, failure or forbearance by a Party to exercise (in whole or in part) any right, power or remedy under, or in connection with, this Agreement shall not operate as a waiver of such right, power or remedy. A waiver of any breach of any of the provisions of this Agreement shall not be effective unless that waiver is in writing and is signed by the Party against whom that waiver is claimed. A waiver of any breach shall not be, or be deemed to be, a waiver of any subsequent breach.

28. **Partial invalidity**

28.1 In the event of the invalidity of any provision of this Agreement, such invalidity shall not affect the enforceability of any other provision of this Agreement.

29. **Notices**

29.1 Any notice or any document required to be given in writing under this Agreement shall be given:

- (a) to TDC, by post or by delivery to the Council's principal place of business at 189 Queen Street, Richmond or such other address as may be provided in writing to NCC from time to time. All notices to TDC shall be marked for the attention of the Council's Chief Executive; and
- (b) to NCC, by post or by delivery to the Council's principal place of business at 110 Trafalgar Street, Nelson or such other address as may be provided in writing to TDC from time to time. All notices to NCC shall be marked for the attention of the Council's Chief Executive


29.2 Any notice that is posted shall be deemed to have been received by the other Party two Working Days after the date of posting.

29.3 Any notice given by a Party may be signed on behalf of that Party by the Party's Chief Executive, any authorised officer of the Party, or by that Party's solicitor.

Dated 15 April

2015

Signed for and on behalf of **TASMAN DISTRICT COUNCIL**

  
Authorised Signatory  
LINDSAY MCKENZIE  
CEO



Item 1: Nelson City Council - Tasman District Council Engineering Services Agreement and  
Nelson City Council - Tasman District Council Waimea Community Dam Funding  
Agreement: Attachment 1

Signed for and on behalf of **NELSON  
CITY COUNCIL**

  
Authorised Signatory

**SCHEDULE 1:**

Plan of Nelson Residential Water Supply Area

**SCHEDULE 2:**

Plan of Water Supply Points

**SCHEDULE 3:**

List of Residential Water Supply Assets

**SCHEDULE 4:**

Plan of Nelson Industrial Water Supply Area

**SCHEDULE 5:**

Formula for calculating price payable by TDC to NCC

**SCHEDULE 6:**

Plan of Nelson Sewerage Services Area



Schedule 1

Extent of Nelson Residential  
Water Supply Area

Released from Confidential  
23 Aug 2021

1:10,444



## Nelson Residential Water Supply Area

Schedule 1

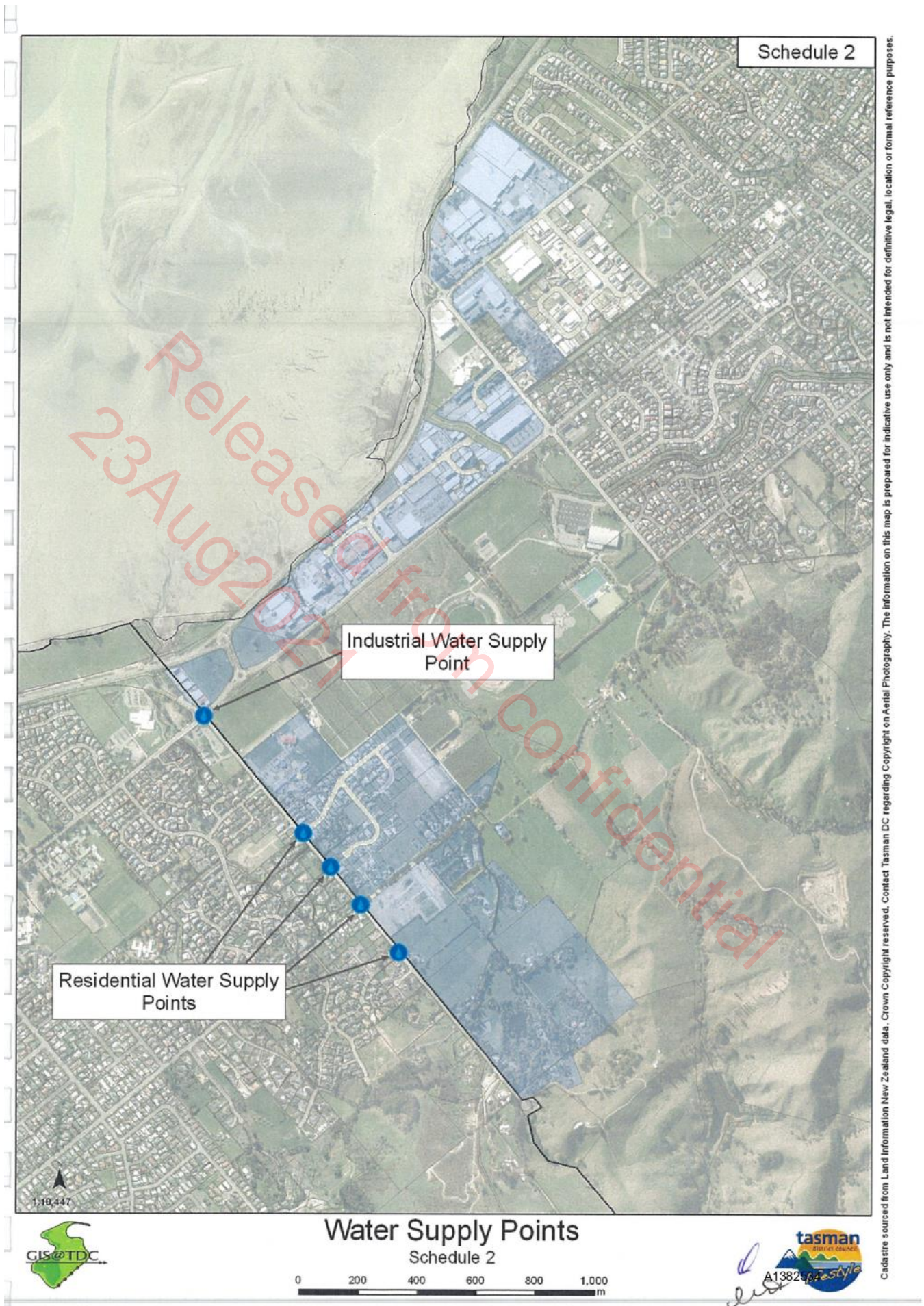
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Item 1: Nelson City Council - Tasman District Council Engineering Services Agreement and  
Nelson City Council - Tasman District Council Waimea Community Dam Funding  
Agreement: Attachment 1



**Schedule 3**

**Residential Water Supply Assets**

<b>Water reticulation</b>	<b>m</b>
15 mm dia	107
20 mm dia	250
25 mm dia	37
32 mm dia	263
40 mm dia	459
50 mm dia	976
100 mm dia	1539
150 mm dia	913
250 mm dia	69

<b>Valves</b>	<b>No</b>
25 mm dia	2
32 mm dia	3
40 mm dia	9
50 mm dia	11
80 mm dia	1
100 mm dia	10
150 mm dia	10
250 mm dia	1

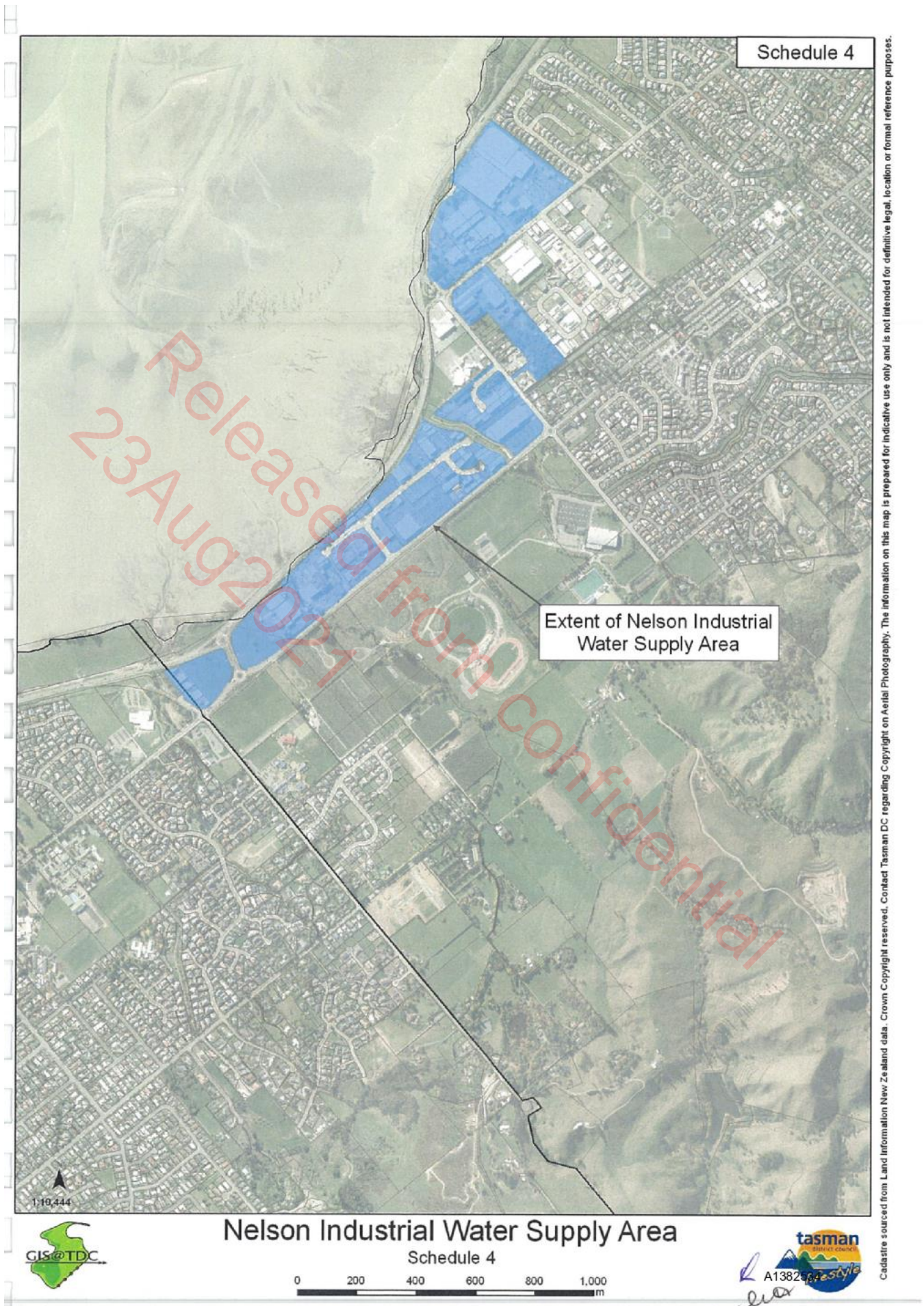
<b>Fire hydrants</b>	<b>21</b>
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**Water connections and Backflow devices**

	<b>No</b>
15 mm dia	27
20 mm dia	116
25 mm dia	1
50 mm dia	2
100 mm dia	2



Item 1: Nelson City Council - Tasman District Council Engineering Services Agreement and  
Nelson City Council - Tasman District Council Waimea Community Dam Funding  
Agreement: Attachment 1



**Attachment:****Roding Water Supply Water Costs Allocation****Current Agreement**

Water Charging Cost Breakdown	TDC Share
-------------------------------	-----------

Components Used

Roding Headworks	5.68%
Roding tunnel and pipeline	5.68%
Marsden PS	10.98%
Foothills Raw Water Pipeline	5.68%
WTP	2.75%
WTP-Brook St	2.55%
Brook St (Hillside Lane - Bronte)	2.76%
Bronte St (Tasman - Rutherford)	2.91%
Rutherford St (Bronte - Van Diemen)	2.91%
Van Diemen (Rutherford - Waimea)	2.91%
Waimea (Van Diemen - Boundary)	5.31%
Boundary (Waimea - TT)	5.31%
TT - Annesbrook	5.93%
Annesbrook - Marsden	10.41%
Main Rd Pipeline (Marsden to Saxton)	22.67%
Main Rd Pipeline (Saxton to Orphanage Ck)	85.00%
Main Rd Pipeline (Orphanage Ck to Champion Rd)	100.00%
Overhead Allocation	6.64%
Share of Rate Requirement	2.43%

Example: Rate Requirement 2010/11	\$10,568,383
-----------------------------------	--------------

2.43% x \$10,568,383 = \$256,811



Item 1: Nelson City Council - Tasman District Council Engineering Services Agreement and  
Nelson City Council - Tasman District Council Waimea Community Dam Funding  
Agreement: Attachment 1

TDC Cost per m3 excluding GST (based on 909 m3 per  
day) 2010/11

\$0.77

TDC Cost based on network operation and maintenance costs + water extraction and  
treatment costs

= \$256,811 total.

**Water Costs Allocation (Proposed)**

Example: 2011/12 financial year:

	O&M	Depr	TDC Share	
<b>Recovery by Fixed Charge</b>				
Roding headworks	\$ 28,633	\$ 43,100	5.68%	\$ 4,011
Roding tunnel and pipeline	\$ 6,496	\$ 71,560	5.68%	\$ 4,434
Marsden Valley pipeline	\$ 2,225	\$ 11,234	19.09%	\$ 2,500
Marsden Rd pipeline	\$ 740	\$ 3,705	100.00%	\$ 4,445
Main Rd pipeline (Marsden to Saxton)	\$ 3,029	\$ 8,959	22.67%	\$ 2,718
Main Rd pipeline (Saxton to Orphanage Ck)	\$ 223	\$ 627	85.00%	\$ 723
Main Rd pipeline (Orphanage Ck to Champion Rd)	\$ 1,680	\$ 4,133	100.00%	\$ 5,813
<b>Recovery by Variable Charge</b>				
Pump Stations	\$ 216,357	\$ 96,140	10.98%	\$ 34,311
Foothills pipelines		\$ 60,973	5.68%	\$ 3,463
WTP	\$ 1,501,493	\$ 1,130,507	2.75%	\$ 72,381
Overheads	\$ 2,476,448		6.64%	\$ 164,448
Renewal of Resource Consent	TBA			
<b>Fixed Charge</b>	<b>\$ 24,776</b>			
<b>Variable Charge \$/m3</b>	<b>\$ 0.83</b>			

↓  
and

Schedule 6

Extent of Nelson Sewerage Services Area

1:10,447



## Nelson Sewerage Services Area

Schedule 6

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Date Exported: 9/10/2014 | Path: V:\Track\T35341\_TDCServiceProvision\NCC\Maps\NelsonSewerageServicesArea-Schedule6\_20141009.mxd



Item 1: Nelson City Council - Tasman District Council Engineering Services Agreement and  
Nelson City Council - Tasman District Council Waimea Community Dam Funding  
Agreement: Attachment 2



Jeff.Cuthbertson@tasman.govt.nz  
Phone 543 8438

9 March 2017

Nelson City Council  
PO Box 645  
Nelson 7040

Attn: The Chief Executive

**RECEIVED**  
15 MAR 2017  
NELSON CITY COUNCIL  
Customer Service

Dear Clare

**Engineering Services Agreement, Tasman District Council, Nelson City Council –  
Nelson Residential Water Supply Area.**

We are in receipt of your signed amended Schedule 1 – Nelson Residential Water Supply  
Area map.

Please find included the counter-signed map to be attached to the agreement.

Yours sincerely

A handwritten signature in blue ink, appearing to be "Jeff Cuthbertson", written over a horizontal line.

Jeff Cuthbertson  
Senior Engineer - Utilities

G:\Utilities\Water\Water - NCC agreement\2017-03-03 Nelson Residential Water Supply Area Agreement.docx

Tasman District Council  
Email [info@tasman.govt.nz](mailto:info@tasman.govt.nz)  
Website [www.tasman.govt.nz](http://www.tasman.govt.nz)  
24 hour assistance

**Richmond**  
189 Queen Street  
Private Bag 4  
Richmond 7050  
New Zealand  
Phone 03 543 8400  
Fax 03 543 9524

**Murchison**  
92 Fairfax Street  
Murchison 7007  
New Zealand  
Phone 03 523 1013  
Fax 03 523 1012

**Motueka**  
7 Hickmott Place  
PO Box 123  
Motueka 7143  
New Zealand  
Phone 03 528 2022  
Fax 03 528 9751

**Takaka**  
14 Junction Street  
PO Box 74  
Takaka 7142  
New Zealand  
Phone 03 525 0020  
Fax 03 525 9972

A1730382

Schedule 1A

Released from confidential  
23Aug2021

Extent of Nelson Residential  
Water Supply Area

1:10,500

A1730382

## Schedule 1A



  
Chairperson

Item 1: Nelson City Council - Tasman District Council Engineering Services Agreement and  
Nelson City Council - Tasman District Council Waimea Community Dam Funding  
Agreement: Attachment 3



9 October 2017

PO Box 645 Nelson 7040  
P 03 546 0200  
F 03 546 0239

David Hammond  
03 545 8813  
david.hammond@ncc.govt.nz  
www.nelson.govt.nz

Lindsay McKenzie  
Chief Executive - Tasman District Council

Dear Lindsay

**ENGINEERING SERVICES AGREEMENT BETWEEN TASMAN DISTRICT COUNCIL  
AND NELSON CITY COUNCIL**

I am writing to you with reference to the Engineering Services Agreement of April 2015 between Tasman District Council (TDC) and Nelson District Council (NCC) (the 2015 ESA) which sets out the rights and obligation of the parties in relation to the supply of water and sewerage services to Nelson South and supply of water from the Roding headworks. I would like to propose the following:

1. That TDC and NCC enter into a new agreement (the new ESA) in relation to supply of water and sewerage services to Nelson South and supply of water from the Roding headworks; and
2. That the attached proposed Terms (A1778747) be incorporated into the new ESA; and
3. That the new ESA be agreed after NCC's public consultation and subsequent decision about the water supply arrangements and contributing to the Waimea Dam; and
4. That the 2015 ESA remain in place until the new ESA is signed; and
5. That the supply to Nelson South Industrial Supply area, which is currently due to cease on 30 June 2020, be made subject to a 3 year notice period.

If this letter and the attached proposed Terms are acceptable to TDC, this letter and your confirmation shall together constitute an agreement to enter into a new ESA incorporating the attached proposed Terms.

The report to Council about the Waimea Dam recommends that a consultation be undertaken on any proposal to contribute to the Dam project. I confirm that any contribution by NCC to the Waimea Dam will be made contingent upon the attached proposed Terms. It is acknowledged that in the event NCC elects to become a shareholder in Dam Co, it would be bound by the shareholding obligations which may require the proposed Terms of the new ESA to be further amended in order to align with the shareholder agreement.

Yours sincerely

**David Hammond**  
Acting Chief Executive

A1844948



**Scenario 1 – 'With Dam' and with NCC's contribution:**

1. Nelson South additional 1,000 m<sup>3</sup>/day (in addition to the current 330m<sup>3</sup>/day making a total of 1,330 m<sup>3</sup>/day) without needing to upgrade TDC reticulation;
  - 1.1. To support ongoing development in Nelson South.
  - 1.2. The 1,330m<sup>3</sup>/day supply is not dependent on NCC investment in TDC's network.
  - 1.3. Point(s) of supply to be via bulk water meters in Champion Road.
  - 1.4. Price of water to be the Richmond Residential Rate that applies at the time. It is understood that the Richmond Residential Rate includes a line charge and a volumetric charge.
2. Future supply
  - 2.1. Future supply to be assured.
  - 2.2. NCC has been allocated 22 000 m<sup>3</sup>/day. NCC does not expect to take up the full 22 000 m<sup>3</sup>/day but expects that demand may reach 12 000 m<sup>3</sup>/day within the next 10 years. The price of the water will need to be negotiated, but the understanding is that it will be no greater than the Richmond Residential Rate that applies at that time.
  - 2.3. NCC acknowledges an investment in TDC's network will be required in order to obtain the water. *(Rough order calculations (ROC) suggest an investment of \$18M to obtain 12,000 m<sup>3</sup>/day, but more detailed calculations are required to substantiate these ROCs).*
3. Nelson Industrial Water Supply Area
  - 3.1. TDC agrees to continue supplying the Nelson Industrial Water Supply Area as per the attached map.
  - 3.2. TDC will invoice these users directly.
  - 3.3. The price of water will need to be negotiated but the understanding is that it will be no greater than the Richmond Residential Rate that applies at the time. It is understood that the Richmond Residential Rate includes a line charge and a volumetric charge.
4. Roding River
  - 4.1. TDC agrees to forfeit the right to take water from the Roding River. This is on the basis that this releases NCC from the obligation to supply TDC and thus the requirement to maintain/replace the pipe.
5. Basis of contribution
  - 5.1. NCC will not be liable if the project costs are higher than estimated and will not share in any savings if the final project cost is less than estimated.
  - 5.2. NCC will not be liable for the refinancing of CIIL loans or meeting any funding shortfall if contributions from WIL or any other party are not forthcoming.
  - 5.3. NCC will not be directly liable for operating costs associated with the Dam, although dam operating costs will be included in the Richmond Residential Rate and therefore included in the charges made to NCC in supplying Nelson South and Nelson Industrial water supply area.

Item 1: Nelson City Council - Tasman District Council Engineering Services Agreement and  
Nelson City Council - Tasman District Council Waimea Community Dam Funding  
Agreement: Attachment 3

- 5.4. A minimum 99 year term is required for 1, 2 and 3 above, provided the dam goes ahead and, subject to dam consent renewals (currently 35 year consent).
- 5.5. NCC/TDC will jointly appoint a director to the Board.

**Scenario 2 – 'With Dam' and No NCC Contribution**

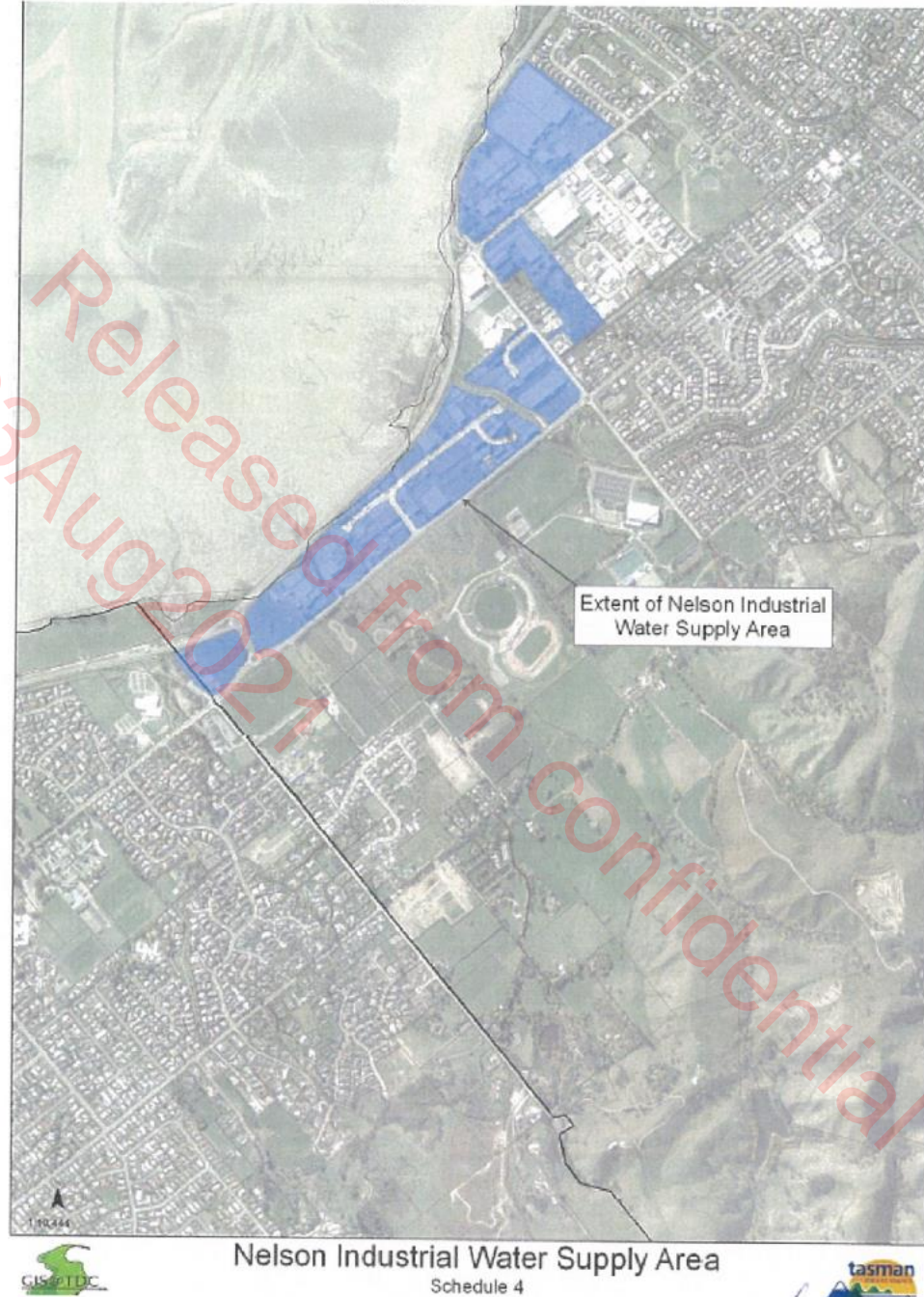
- 6. Nelson South and Nelson Industrial Water Supply Area
  - 6.1. TDC continue to service as per TDC NCC Engineering Services agreement March 2015 (the current ESA).
- 7. Roding River
  - 7.1. TDC retains its current right to take water from the Roding River but via an alternative point of supply (essentially NCC released from retaining and maintaining the current delivery pipe). TDC may relinquish this right once reticulation upgrades in Richmond completed.
  - 7.2. Part C of the current ESA dealing with supply from the Roding will be renegotiated.
- 8. General Criteria
  - 8.1. TDC could consider taking 'ownership' of the capacity allocated to NCC (22,000m<sup>3</sup>/day)
  - 8.2. TDC will need to negotiate a price with NCC should NCC need to access additional water from TDC beyond the 1,330m<sup>3</sup>/day (the dam operating costs will be included in the Richmond Residential Rate and therefore included in the charges made to NCC in supplying Nelson South and Nelson Industrial water supply area).

**Scenario 3 - No Dam**

- 9. Nelson Residential Water Supply Area and Nelson Industrial Water Supply Area
  - 9.1. TDC will activate the 3 years notice for termination of supply clause from the date of the 'No-Dam' decision.
  - 9.2. In the event that the decision on the Dam is delayed beyond 30 June 2017, TDC agrees to amend Clause 10.1 of the current WSA so that the 30 June 2020 deadline for ceasing industrial supply is extended to a period three years beyond the decision not to proceed with the Dam (should such a decision be made)
- 10. Roding River
  - 10.1. TDC retains its current right to take water from the Roding River but via an alternative point of supply (essentially NCC released from retaining and maintaining the current delivery pipe).
  - 10.2. Part C of the current WSA dealing with supply from the Roding will be renegotiated.

A1778747

Map: Nelson Industrial Water Supply Area





Item 1: Nelson City Council - Tasman District Council Engineering Services Agreement and  
Nelson City Council - Tasman District Council Waimea Community Dam Funding  
Agreement: Attachment 3



LTC202  
Lindsay.mckenzie@tasman.govt.nz  
Phone 543 7205

12 October 2017

Nelson City Council  
PO Box 645  
Nelson 7040

Attention: David Hammond, Acting Chief Executive

Dear David

**Engineering Services Agreement between Tasman District Council and Nelson City Council**

Thank you for your letter of 9 October 2017 regarding the agreement for engineering services between our two councils.

Tasman District Council agrees with your proposal (points 1 to 5) in your letter.

I also acknowledge your comments regarding any contribution from Nelson City Council to the Waimea Dam and the resulting shares in DamCo. The agreement may require further amendment after Nelson City Council has made its decision.

Regards

Yours sincerely

A handwritten signature in blue ink, appearing to read "Lindsay", written over a large, diagonal, semi-transparent red watermark that says "23 Released from Confidential".

Lindsay McKenzie  
Chief Executive

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# Engineering Services Agreement

BETWEEN  
TASMAN DISTRICT COUNCIL

AND

NELSON CITY COUNCIL

Released from confidential  
23 Aug 2021  
DRAFT

## Engineering Services Agreement

Between TASMAN DISTRICT COUNCIL (TDC)

And NELSON CITY COUNCIL (NCC)

### BACKGROUND

- A. On or about 19 September 2005 TDC and NCC entered into an engineering services agreement.
- B. The 2005 agreement set out the rights and obligations of the parties in relation to:
- (i) the supply of water by TDC to certain properties in Nelson, situated on the north side of Champion Road, and Hill Street North, and in the Wakatu Industrial Estate;
  - (ii) the supply of water by NCC to TDC from the Roding Headworks;
  - (iii) the provision of sewerage services from TDC to certain properties in Nelson, situated on the north side of Champion Road; and
  - (iv) upgrades to Champion Road, Richmond as a result of development in Nelson.
- C. The 2005 agreement, as varied by exchange of letters between the parties, expired on 30 June 2015 and the parties entered into a new agreement on 15 April 2015.
- D. As a result of Part B: WATER SUPPLY TO NELSON INDUSTRIAL WATER SUPPLY AREA of the agreement expiring on 30 June 2020 and changes to the wider water supply environment the parties wish to enter into a new agreement.
- E. The parties have agreed that:
- (i) TDC will continue to supply water to some of the properties in Nelson;
  - (ii) TDC will continue to supply water to NCC for the purposes of NCC supplying water to some of the properties in Nelson;

- (iii) NCC will continue to supply TDC with water from the Roding Headworks on the terms set out in this agreement until the commencement of operation of the Waimea Community Dam;
- (iv) TDC will continue to supply sewerage services to certain properties in Nelson on the terms set out in this agreement.

## IT IS AGREED

TDC and NCC covenant as follows:

### 1. Interpretation

1.1 In this Agreement, unless the context otherwise requires:

Agreement

means this Agreement, and includes any Schedules annexed to this Agreement and any variations to this Agreement agreed to by the parties in writing

2015 Agreement

means the Engineering Services Agreement between the parties entered into on 15 April 2015, and includes any Schedules annexed to that Agreement and any variations to that Agreement agreed to by the parties in writing

GST

means all that tax from time to time payable under the Goods and Services Tax Act 1985 as amended from time to time, and any legislation enacted in substitution for that Act

NCC

means Nelson City Council, and includes its successors

Nelson Industrial Water Supply Area means all the land shaded blue on the plan attached to this Agreement as Schedule 4

Nelson Residential Water Supply Area means all the land shaded blue on the plan attached to this Agreement as Schedule 1

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Nelson Sewerage Services Area	means all the land shaded red on the plan attached to this Agreement as Schedule 6
Parties	means the parties to this Agreement
Person	includes an individual, the Crown, a corporation sole and any body of persons (whether corporate or unincorporated)
Schedule	means a schedule to this Agreement
TDC	means Tasman District Council, and includes its successors
Working Day	means any day of the week other than:  (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's Birthday, Waitangi Day and Nelson Anniversary Day; and  (b) a day in the period commencing with the 25 <sup>th</sup> day of December in any year and ending with the 5 <sup>th</sup> day of January in the following year.

1.2 In this Agreement, unless the context otherwise requires:

- (a) Words importing the singular shall include the plural and vice versa;
- (b) Any Schedule to this Agreement shall have the same effect as if set out in the body of this Agreement;
- (c) Clause headings are inserted for reference only and shall not affect the interpretation of this Agreement;
- (d) Words or expressions that are defined are indicated by capital letters for convenience. The absence of a capital letter shall not alone imply that the word or expression is used with a different meaning from that given by its definition;
- (e) References to statutes, regulations and rules, includes that

legislation as amended from time to time and any legislation in substitution therefore.

- 1.3 The parties acknowledge that this Agreement is a joint local government arrangement, as defined in section 137 Local Government Act 2002.

## **PART A: WATER SUPPLY TO NELSON RESIDENTIAL WATER SUPPLY AREA**

### **2. Conditions and Term of Part A**

- 2.1 The rights and obligations of the parties under Part A of this Agreement shall commence on 1 July 2021 (**Part A Commencement Date**) and shall expire on 30 June 2075 subject to earlier termination in accordance with Part A or Part E of this Agreement (**the Part A Term**).

### **3. Supply**

- 3.1 During the Part A Term NCC shall be responsible for supplying water by network reticulation to all land within the Nelson Residential Water Supply Area. **NCC will also be responsible for reading customer meters and invoicing of customer usage.**
- 3.2 Subject to clauses 3.3, 5.1, 5.2, and 22.1, during the Part A Term TDC shall supply to NCC, and NCC shall purchase from TDC, the majority of the water that NCC uses to supply the Nelson Residential Water Supply Area on the terms set out in this Agreement.
- 3.3 **At any time during the Part A Term NCC may stop purchasing water from TDC to supply all or part of the land within the Nelson Residential Water Supply Area if NCC has given TDC at least three years prior notice in writing. Upon expiry of any notice period to cease purchase of all water from TDC the rights and obligations of the parties under Part A of this Agreement shall terminate. All other parts of this Agreement, which have not previously been cancelled in accordance with this Agreement, shall continue in full force and effect.**

### **4. Price**

- 4.1 NCC shall pay TDC for water supplied by TDC pursuant to clause 3.2. In each and every rating year during the Part A Term, commencing on **the Part A commencement date**, the amount payable by NCC to TDC for each cubic metre of water supplied by TDC to NCC shall be calculated in accordance with the following formula (subject to review in accordance with clause 4.3):

water rate x 0.7 x 365 = \$X

water supply services charge = \$Y

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$$\$X + \$Y + \$U \text{ (if any)} = \$Z$$

\$Z plus GST = amount payable for each cubic metre of water supplied by TDC  
(0.7 x 365)

4.2 In clause 4.1:

- (a) **water rate** is the water rate per cubic metre (excluding GST) of water supplied, that is levied or charged by TDC from time to time on the majority of rating units with a metered connection in Richmond; and
- (b) **water supply services charge** is the fixed annual amount for supply of water (excluding GST) that is levied or charged by TDC from time to time on the majority of rating units with a metered connection in Richmond; and
- (c) **'U'** is the total annual amount (if any) of the targeted rate, or fees and charges (excluding GST), levied or charged by TDC from time to time on the majority of rating units with a metered connection in Richmond for the purpose of funding the capital and/or operating and/or environmental cost of a Waimea Community Dam, or other significant project to meet the demand for water in Richmond.

4.3 The formula set out in clause 4.1 of this Agreement is based on water consumption of 700 litres per day by each of the 475 lots in the Nelson Residential Water Supply Area, which is the reason for the reference to '0.7' (the daily consumption figure) whenever it occurs in the said formula. On or about 1 November 2021, and every two years thereafter during the Part A Term, TDC may review the average daily water consumption by each of the 475 lots, and increase or decrease the daily consumption figure by notice in writing to NCC by the end of December to reflect any changes. This will allow sufficient time for both Councils to have the changes included in their respective Annual Plans or Long Term Plans. The new daily consumption figure shall be used to calculate:

- (a) the annual water rate payable by NCC to TDC in the rating year commencing on 1 July following the date of the notice; and
- (b) the maximum daily allowance under clause 5.1 of this Agreement applicable from 1 July following the date of the notice. The maximum daily allowance shall be calculated by multiplying 475 by the new daily consumption figure.

4.4 TDC shall notify NCC by the end of December in each year during the Part A Term if TDC proposes to levy or charge the rates, fees or charges described as 'U' in clause 4.2 in the following financial year. This will allow sufficient time for NCC to include the proposed charges in its Annual Plan or Long Term Plan.

4.5 If at any time NCC proposes to pay TDC a monetary contribution towards the



capital cost of a Waimea Community Dam, or other significant project to meet the demand for water in Richmond, then prior to NCC making a decision on such proposal NCC and TDC shall meet to consider whether the amount 'U' in the formula set out in clause 4.1 will be varied, and the period of any such variation, if NCC pays the proposed monetary contribution.

- 4.6 The quantity of water supplied to NCC shall be measured at the water meters described in clause 7.1 of this Agreement.
- 4.7 TDC will submit a tax invoice to NCC at the beginning of each month for water supplied by TDC pursuant to this Agreement. NCC will pay TDC on the 20th day of the month following the date of the invoice.
- 4.8 If NCC shall fail to pay an invoice submitted by TDC under clause 4.7 by the due date for payment, NCC shall pay TDC interest on the outstanding amount from the due date for payment until the date of repayment at an annual rate that is 5% above the Reserve Bank of New Zealand 90 Day Bank Bill Rate on the due date for payment (or the next Working Day if no rate is published on the due date).
- 4.9 Annually on 1 July of each year during the Part A Term NCC shall notify TDC of the number of rating units within the Nelson Residential Water Supply Area that are connected to the NCC water supply network reticulation and supplied with water from TDC.

## **5. Quantity and Pressure**

- 5.1 Subject to clause 5.4, TDC is not required to sell to NCC, and NCC is not required to purchase, more than 330 cubic metres of water per day (maximum daily allowance) (subject to review in accordance with clause 4.3). It is intended that water supplied for the purpose of firefighting within the Nelson Residential Water Supply Area is not included in the maximum daily allowance.
- 5.2 At any time during the Part A Term TDC may reduce the maximum daily allowance under clause 5.1 if TDC has given NCC at least three years prior written notice.
- 5.3 Subject to clause 22.1, TDC shall supply water to NCC under this Agreement at the following pressure range at the water meters described in clause 7.2: 300-900kPa.
- 5.4 Subject to clause 22.1, TDC shall supply NCC with sufficient quantity of water for the purpose of firefighting within the Nelson Residential Water Supply Area to comply with the minimum water volume for firefighting in urban districts recommended in the New Zealand Fire Service Firefighting Water Supplies Code of Practice 2008 and all Codes of Practice issued by the New Zealand Fire Service in amendment of, or substitution for, the same.
- 5.5 If at any time during the Part A Term TDC imposes a restriction on the use of

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water in Richmond:

- (a) by public notice in accordance with the Tasman District Council Public Water Supply Bylaw 2016 (amended 2019), as amended from time to time, or any bylaw in substitution; or
- (b) in order to comply with the Tasman Resource Management Plan (as amended from time to time, or anything in substitution thereof), or a water shortage direction imposed under the Resource Management Act 1991 (as amended from time to time, or anything in substitution thereof); or
- (c) in order to comply with the conditions of any water permit applicable to the supply of water to the Nelson Residential Water Supply Area;

then NCC shall immediately use its best endeavours to impose equivalent restrictions on all properties within the Nelson Residential Water Supply Area for the duration of the restriction imposed by TDC.

**6. Quality**

- 6.1 The water supplied by TDC to NCC pursuant to Part A of this Agreement shall comply with the water quality standards for drinking water set out in the New Zealand Drinking Water Standards for New Zealand 2005 (Revised 2018) or any subsequent revision.

**7. Supply points and meters**

- 7.1 TDC shall supply water to NCC pursuant to Part A of this Agreement at the water supply points marked on the plan attached as Schedule 2, and such other water supply points as are agreed to in writing by NCC and TDC.
- 7.2 TDC will ensure that there is a water meter and back flow prevention located at each of the water supply points.
- 7.3 TDC shall be responsible for calibration and maintenance of the water meters and back flow prevention described in clause 7.2. Both parties are entitled to check the water meters for accuracy.
- 7.4 TDC shall read the water meters each month to determine the quantity of water used by NCC. If any of the water meters in clause 7.2 shall cease to register correctly, the quantity of water passing through it shall be estimated, based on readings from the same period in the previous year. If such readings are not available, then the estimate will be based on readings from the month immediately preceding the malfunction.
- 7.5 Water supplied by TDC to NCC under Part A of this Agreement shall be at NCC's

risk once the water has passed through the water meter and backflow assembly described in clause 7.2.

- 7.6 Charges made for any water lost as a result of a leak, or failure of the water meter or backflow assembly described in clause 7.2 will be adjusted by TDC to reflect the volume of water estimated to have been lost.

**8. Consumer Guarantees Act**

- 8.1 The parties agree that NCC is acquiring water under this Agreement for the purposes of a business (as defined in the Consumer Guarantees Act 1993) and that the provisions of the Consumer Guarantees Act 1991 do not apply to the sale and purchase of water, pursuant to this Agreement.

**PART B: WATER SUPPLY TO NELSON INDUSTRIAL WATER SUPPLY AREA**

**9. Conditions and Term of Part B**

- 9.1 The rights and obligations of the parties under Part B of this Agreement shall commence on 1 July 2021 (Part B Commencement Date) and shall expire on 30 June 2075 subject to earlier termination in accordance with Part B or Part E of this Agreement (the Part B Term).

**10. Supply**

- 10.1 During the Part B Term TDC shall continue to be responsible for supplying water by network reticulation to all land within the Nelson Industrial Water Supply Area that TDC supplies with water by network reticulation as at the date of this agreement, on such terms and conditions as TDC applies from time to time to the majority of rating units with a metered connection in Richmond. TDC will also be responsible for reading customer meters and invoicing of customer usage.
- 10.2 During the Part B term NCC shall notify TDC of any change of ownership of properties in the Nelson Industrial Water Supply Area that are supplied by TDC.
- 10.3 At any time during the Part B Term TDC may stop supplying water from TDC to all or part of the land within the Nelson Industrial Water Supply Area if TDC has given NCC at least three years prior notice in writing. Upon expiry of any notice period to cease supply of all water from TDC the rights and obligations of the parties under Part B of this Agreement shall terminate. All other parts of this Agreement, which have not previously been cancelled in accordance with this Agreement, shall continue in full force and effect.
- 10.4 TDC will retain ownership of and maintenance responsibility for the Waterworks (Nelson Industrial Water Supply Area) network listed in Schedule 3 as long as TDC use the network to supply water to the Nelson Industrial Water Supply Area.
- 10.5 NCC shall allow TDC, its employees, contractors and agents to enter onto

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land owned by NCC at any time to carry out maintenance of the **TDC Waterworks (Nelson Industrial Water Supply Area) network located within the Nelson City Council Territorial Area** referred to in clause 10.4.

**PART C: WATER SUPPLY FROM NCC TO TDC**

**11. Term of Part C**

**11.1** The rights and obligations of the parties under Part C of this Agreement shall commence on 1 July 2021 and shall expire on 30 June 2075, subject to earlier termination in accordance with Part C or Part E of this Agreement (The Part C Term).

**11.2** Either Party may terminate Part C of this Agreement by notice in writing to the other party if NCC's resource consent to take water from the Roding Headworks as at the date of this Agreement expires, and is not renewed. Upon termination the rights and obligations of the parties under Part C of this Agreement shall cease, without prejudice to the rights and remedies of either party against the other for any prior breach of Part C of this Agreement. All other parts of this Agreement, which have not previously been cancelled in accordance with this Agreement, shall continue in full force and effect.

**11.3** TDC may terminate Part C of this Agreement at any time by 6 months' notice in writing to NCC if TDC decides that it no longer wishes to take water from the Roding Headworks. Upon expiry of the notice period the rights and obligations of the parties under part C of this Agreement shall cease, without prejudice to the rights and remedies of either party against the other for any prior breach of Part C of this Agreement. All other parts of this Agreement, which have not previously been cancelled in accordance with this Agreement, shall continue in full force and effect.

**11.4** Notwithstanding clauses 11.1, 11.2 and 11.3, Part C of this agreement shall terminate upon the commencement of operation of the Waimea Community Dam. Upon termination the rights and obligations of the parties under Part C of this Agreement shall cease, without prejudice to the rights and remedies of either party against the other for any prior breach of Part C of this Agreement. All other parts of this Agreement, which have not previously been cancelled in accordance with this Agreement, shall continue in full force and effect.

**12. Supply**

**12.1** Subject to clauses 12.2, 16.1 and 22.1, during the Part C Term NCC shall supply water to TDC from the Roding Headworks, and TDC shall purchase such water, on the terms set out in this Agreement.

**12.2** TDC shall use water supplied by NCC from the Roding Headworks with sufficient frequency and volume to ensure the water in the pipeline meets the requirements of the water quality standards for drinking water set out in the New Zealand Drinking Water Standards for New Zealand 2005 (Revised 2018), but otherwise there is no obligation on TDC to use such water.

**12.3** TDC shall allow NCC, its employees, contractors and agents to enter onto

land owned by TDC at any time to carry out maintenance of the NCC trunkmain located within the Tasman District Council Territorial Area referred to in clauses 12.1 and 16.1.

### **13. Price**

- 13.1** The price payable by TDC to NCC for water supplied under clause 12.1 shall be calculated in accordance with the formula set out in Schedule 5 of this Agreement.
- 13.2** On or about 1 November in each year during the Part C Term NCC may, after consultation with TDC, review the operations and maintenance costs, and depreciation costs, described in Schedule 5 of this Agreement that are used to calculate the Fixed and Variable Charges in accordance with the formula set out in that Schedule. Following review, NCC shall give written notice to TDC specifying the new Fixed and Variable Charges by the end of December to allow sufficient time for both Councils to have the changes included in their respective Annual Plans and Long Term Plans. The new Fixed and Variable Charges shall come into effect on the 1st day of July following the date of NCC's notice.
- 13.3** If, as a result of any review under clause 13.2, NCC increases either the Fixed or the Variable Charge by an amount that is greater than 4% of the charge payable in the preceding year then TDC may cancel Part C of this Agreement by three months' notice in writing to NCC. Upon expiry of the notice period the rights and obligations of the parties under part C of this Agreement shall cease, without prejudice to the rights and remedies of either party against the other for any prior breach of Part C of this Agreement. All other parts of this Agreement, which have not previously been cancelled in accordance with this Agreement, shall continue in full force and effect.
- 13.4** The price payable by TDC to NCC for water pursuant to Part C of this Agreement includes TDC's contribution to the operation and maintenance costs of the Roding Headworks and the Roding Trunk Main System.
- 13.5** The quantity of water used by TDC shall be measured at the water meter described in clause 16.2 of this Agreement.
- 13.6** NCC will submit a tax invoice to TDC each month for water supplied by NCC pursuant to this Agreement. TDC will pay NCC on the 20th day of the month following the date of the invoice.
- 13.7** If TDC shall fail to pay an invoice submitted by NCC under clause 19.6 by the due date for payment, TDC shall pay NCC interest on the outstanding amount at an annual rate that is 5% above the Reserve Bank of New Zealand 90 Day Bank Bill Rate on the due date for payment (or the next Working Day if no rate is published on the due date).

### **14. Quantity and pressure**

- 14.1** NCC shall supply water to TDC from the Roding Headworks at the rate of 909



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cubic metres per day or 1/15th of the authorised daily abstraction from the Roding Headworks, whichever is the lesser (**daily entitlement limit**).

- 14.2 Any water supply to TDC above the daily entitlement limit is completely at the discretion of NCC. Any additional water that NCC chooses to supply to TDC will be charged for at the same rate that NCC charges from time to time for water that NCC supplies to the majority of rating units with a metered connection in Nelson.
- 14.3 In the event of a low river flow causing a reduced abstraction from the Roding Headworks, NCC will advise TDC of TDC's share of the authorised daily abstraction and check the flow meter at least weekly. In turn, TDC will ensure that this daily allowable take is not exceeded, without NCC's express consent, by controlling the relevant equipment.
- 14.4 Subject to clause 22.1 NCC shall supply water to TDC under this Agreement at the following pressure: minimum 300kPa.

**15. Quality**

- 15.1 The water supplied by NCC to TDC pursuant to this Agreement shall comply with the water quality standards for drinking water set out in the New Zealand Drinking Water Standards for New Zealand 2005 (Revised 2018).

**16. Supply points and meters**

- 16.1 NCC will supply water to TDC pursuant to this Agreement at the intersection of Champion Road and Salisbury Road, Richmond.
- 16.2 NCC will ensure that a water meter, and backflow prevention, is located at the water supply point described in clause 16.1.
- 16.3 NCC shall be responsible for calibrating and maintaining the water meter and backflow prevention described in clause 16.2. Both parties are entitled to test the meter for accuracy.
- 16.4 NCC shall read the water meters each month to determine the quantity of water used by TDC. If the water meter in clause 16.2 shall cease to register correctly, the quantity of water passing through it shall be estimated, based on readings from the same period in the previous year. If such readings are not available then the estimate will be based on readings from the month immediately preceding the malfunction.
- 16.5 Water supplied by NCC to TDC under this Agreement shall be at TDC's risk once the water has passed through the water meter and backflow assembly described in clause 16.2.
- 16.6 Charges made for any water lost as a result of a leak, or failure of the water meter or backflow assembly will be adjusted by NCC to reflect the volume of water estimated to have been lost or incorrectly charged for.

## **17. Consumer Guarantees Act**

- 17.1** The parties agree that TDC is acquiring water under this Agreement for the purposes of a business (as defined in the Consumer Guarantees Act 1993) and that the provisions of the Consumer Guarantees Act 1991 do not apply to the sale and purchase of water pursuant to this Agreement.

## **PART D: SEWERAGE SERVICES**

### **18. Term of Part D**

- 18.1** The rights and obligations of the parties under Part D of this Agreement shall commence on 1 July 2021 and shall expire on 30 June 2025, subject to earlier termination in accordance with Part E of this Agreement (The Part D Term).

### **19. Sewerage services**

- 19.1** During the Part D Term TDC shall provide sewerage reticulation to all land within the Nelson Sewerage Services Area that TDC provides sewerage services to as at the date of this Agreement, on such terms and conditions as TDC applies to the Richmond residential area.
- 19.2** TDC shall directly invoice users of the sewerage services supplied pursuant to clause 19.1.
- 19.3** TDC shall be responsible for maintenance of that part of the sewerage reticulation described in clause 19.1 that is under the control of TDC within property and roadways as identified by the current version of Top of the South Maps.
- 19.4** NCC shall be responsible for maintenance of that part of the sewerage reticulation serving NCC users that is under the control of NCC but that lies within the roadways owned by TDC, as identified by the current version of Top of the South Maps.
- 19.5** TDC shall allow NCC, its employees, contractors and agents to enter onto land owned by TDC at any time to carry out maintenance of the NCC network reticulation referred to in clause 19.4.
- 19.6** NCC shall allow TDC, its employees, contractors and agents to enter onto land owned by NCC at any time to carry out maintenance of the TDC network reticulation referred to in clause 19.3.

**PART E: MISCELLANEOUS RIGHTS AND OBLIGATIONS**

**20. Term of Part E**

- 20.1 Part E of this Agreement shall commence on the 1 July 2021 and shall expire on 30 June 2075, subject to earlier termination in accordance with this Agreement.

**21. Assignment and subcontracting**

- 21.1 Neither Party shall assign its rights or obligations under this Agreement to any Person.
- 21.2 Subject to clause 21.3 neither Party shall subcontract all or part of its obligations under this Agreement to any Person without the prior written consent of the other Party.
- 21.3 Either Party may subcontract their maintenance obligations under this agreement to any Person, but the subcontracting of such obligations shall not relieve that Party from any liability or obligation under this agreement.

**22. Shut downs**

- 22.1 Either Party may reduce the volume or pressure of water supplied to the other Party pursuant to this Agreement for the purposes of carrying out maintenance of waterworks, and for such period as the maintenance works are carried out, provided the Party wishing to reduce the supply of water has given 1 week prior notice in writing to the other Party

**23. Termination**

- 23.1 Either Party may terminate this Agreement by written notice to the other Party if:
- (a) The other party fails to comply with a term of this Agreement and, where such breach is capable of being remedied, the other Party fails to remedy the breach within 28 days after receiving a written notice from the terminating Party specifying the breach and requiring it to be remedied; or
  - (b) The other party fails to comply with a term of this Agreement and such breach is not capable of being remedied.
- 23.2 Subject to clause 23.3, TDC or NCC may terminate this Agreement, or Part A, B, C or D of this Agreement, at any time by three year's notice in writing to the other party. TDC or NCC may terminate the Agreement or a Part of this Agreement pursuant to this clause for any reason. If TDC or NCC only terminate a Part of this Agreement under this clause then other parts of this Agreement which have not previously been cancelled, shall continue in full force and effect.
- 23.3 NCC shall not terminate Part C of this Agreement except in accordance with clauses 11.2 of this Agreement.

- 23.4 Termination of this Agreement by either Party for any reason shall be without prejudice to the rights and remedies of that Party against the other Party.

## **24. Development Contributions**

- 24.1 If NCC terminates all or part of this Agreement then TDC is not liable to pay NCC the amount of any development contributions (as defined in section 197 Local Government Act 2002) or water connection charges that have been paid to TDC as a result of any development, building, or service connection within the Nelson Residential Water Supply Area.
- 24.2 If TDC terminates all or part of this Agreement and ceases to supply water to the Nelson Residential Water Supply Area then TDC shall promptly refund to NCC a portion of the development contributions (as defined in section 197 Local Government Act 2002) and water connection charges that have been paid to TDC as a result of any development, building, or service connection within the Nelson Residential Water Supply Area using a straight line depreciation from the date the charges were paid to TDC until 30 June 2075. The amount payable to NCC is the remaining value of the development contributions and water connection charges shown by this straight line depreciation, as at the date of termination.

## **25. Force majeure**

- 25.1 Notwithstanding any provision to the contrary in this Agreement, whether expressed or implied, a Party shall not be liable for failure to perform any of its obligations under this Agreement where such failure is caused by an event beyond that Party's reasonable control including, but not limited to, power stoppages, acts of God, war, lightning, fire, earthquake, storm, flood, explosion, or act of terrorism (force majeure event).
- 25.2 If any Party is affected by a force majeure event it shall immediately notify the other Party of the occurrence of the event and the expected duration of the event.
- 25.3 Either Party may terminate this Agreement by giving the other party one month's written notice if a failure by the other Party to perform its obligations in the circumstances referred to in clause 25.1 continues for a period of more than three months.

## **26. Non-waiver**

- 26.1 Any delay, failure or forbearance by a Party to exercise (in whole or in part) any right, power or remedy under, or in connection with, this Agreement shall not operate as a waiver of such right, power or remedy. A waiver of any breach of any of the provisions of this Agreement shall not be effective unless that waiver is in writing and is signed by the Party against whom that waiver is claimed. A waiver of any breach shall not be, or be deemed to be, a waiver of any subsequent breach.



**27. Partial invalidity**

- 27.1** In the event of the invalidity of any provision of this Agreement, such invalidity shall not affect the enforceability of any other provision of this Agreement.

**28. Emergency Supply**

- 28.1** As the trunk main/s between NCC and TDC reach their end of service life, both Council's will work collaboratively on a replacement/funding strategy to ensure a link between NCC/TDC remains in place that will allow transfer of potable water to each council in case of an emergency.

**29. Maintenance of Utilities**

- 29.1** TDC and NCC shall allow each other's employees, contractors and agents to enter onto land owned by the respective Council at any time to carry out maintenance of any utility not specifically covered in any other clause of this agreement.
- 29.2** It will be the responsibility of the Council undertaking the maintenance to put in place all necessary approvals and community notices. All works and reinstatement must be carried out in accordance with the Nelson Tasman Land Development Manual 2019 or successor document.

**30. Three Waters Reform**

- 30.1** In the event of any law or regulation being proposed, passed or amended in connection with the Three Waters Reform and such law or regulation adversely affects or is reasonably likely to adversely affect TDC's or NCC's rights under this Agreement, TDC and NCC will engage with each other and will use reasonable endeavours to work collaboratively together to ensure that neither's rights under this Agreement are adversely affected.

**31. Notices**

- 31.1** Any notice or any document required to be given in writing under this Agreement shall be given:
- (a) to TDC, by post or by delivery to the Council's principal place of business at 189 Queen Street, Richmond or such other address as may be provided in writing to NCC from time to time. All notices to TDC shall be marked for the attention of the Council's Chief Executive; and
  - (b) to NCC, by post or by delivery to the Council's principal place of business at 110 Trafalgar Street, Nelson or such other address as may be provided in writing to TDC from time to time. All notices to NCC shall be marked for the attention of the Council's Chief Executive

31.2 Any notice that is posted shall be deemed to have been received by the other Party **five** Working Days after the date of posting.

31.3 Any notice given by a Party may be signed on behalf of that Party by the Party's Chief Executive, any authorised officer of the Party, or by that Party's solicitor.

Dated .....20

**Signed for and on behalf of TASMAN DISTRICT COUNCIL**

\_\_\_\_\_  
Authorised Signatory

**Signed for and on behalf of NELSON CITY COUNCIL**

\_\_\_\_\_  
Authorised Signatory

Item 1: Nelson City Council - Tasman District Council Engineering Services Agreement and  
Nelson City Council - Tasman District Council Waimea Community Dam Funding  
Agreement: Attachment 4

**SCHEDULE 1:**

Plan of Nelson Residential Water Supply Area

**SCHEDULE 2:**

Plan of Water Supply Points

**SCHEDULE 3:**

List of Nelson Industrial Water Supply Area Assets

**SCHEDULE 4:**

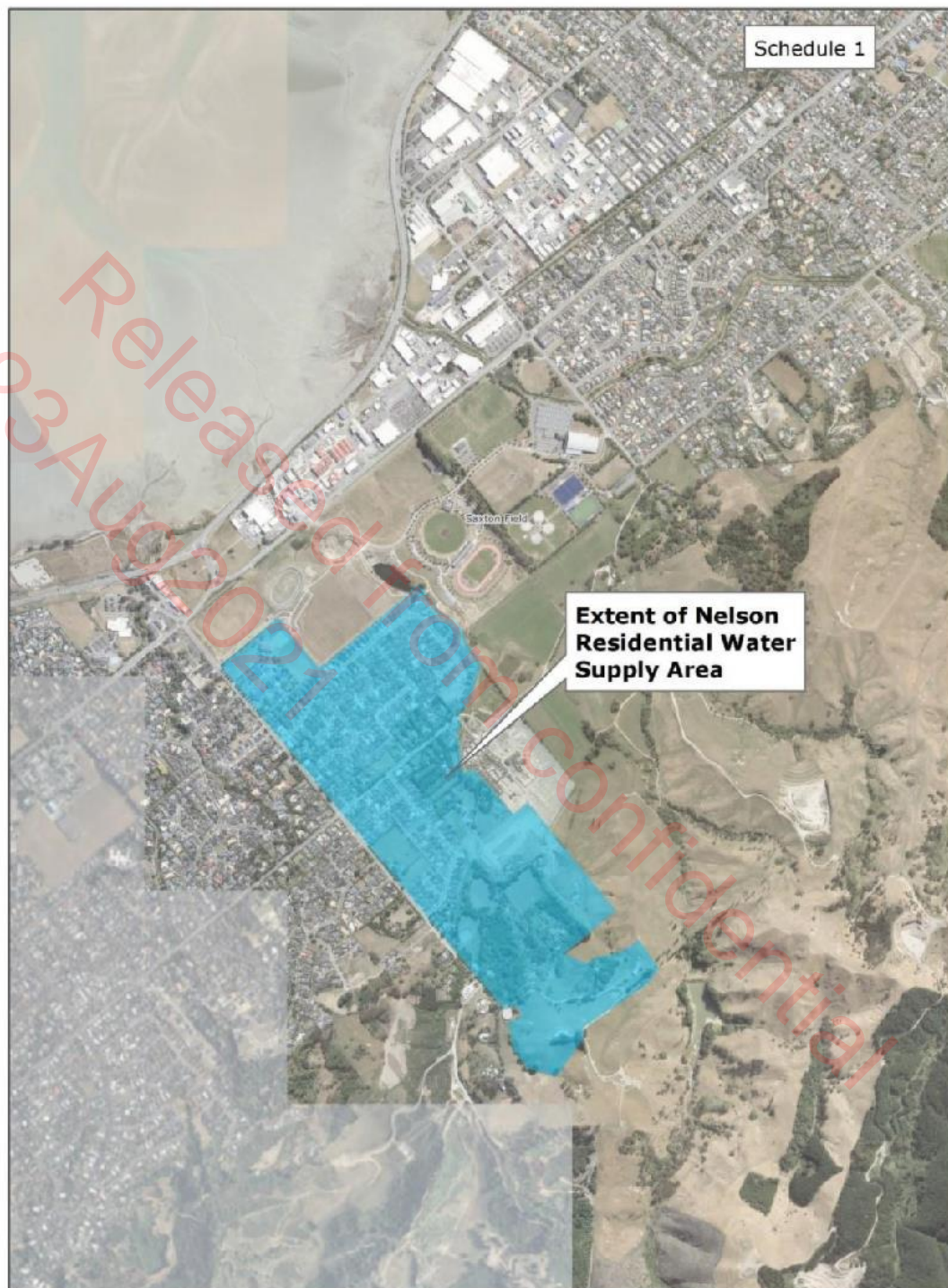
Plan of Nelson Industrial Water Supply Area.

**SCHEDULE 5:**

Formula for calculating water price payable by TDC to NCC

**SCHEDULE 6:**

Plan of Nelson Sewerage Services Area



The map is an approximate representation only and must not be used to determine the location or size of items shown, or to identify legal boundaries. To the extent permitted by law, the Nelson City Council, their employees, agents and contractors will not be liable for any costs, damages or loss suffered as a result of the data or plan, and no warranty of any kind is given as to the accuracy or completeness of the information represented. Nelson City Council information is licensed under a Creative Commons Attribution 4.0 International License, and the use of any data or plan or any information downloaded must be in accordance with the terms of that licence. For more information please contact us. Cadastral information derived from Land Information New Zealand. CROWN COPYRIGHT RESERVED.

## Nelson Residential Water Supply Area

Schedule 1



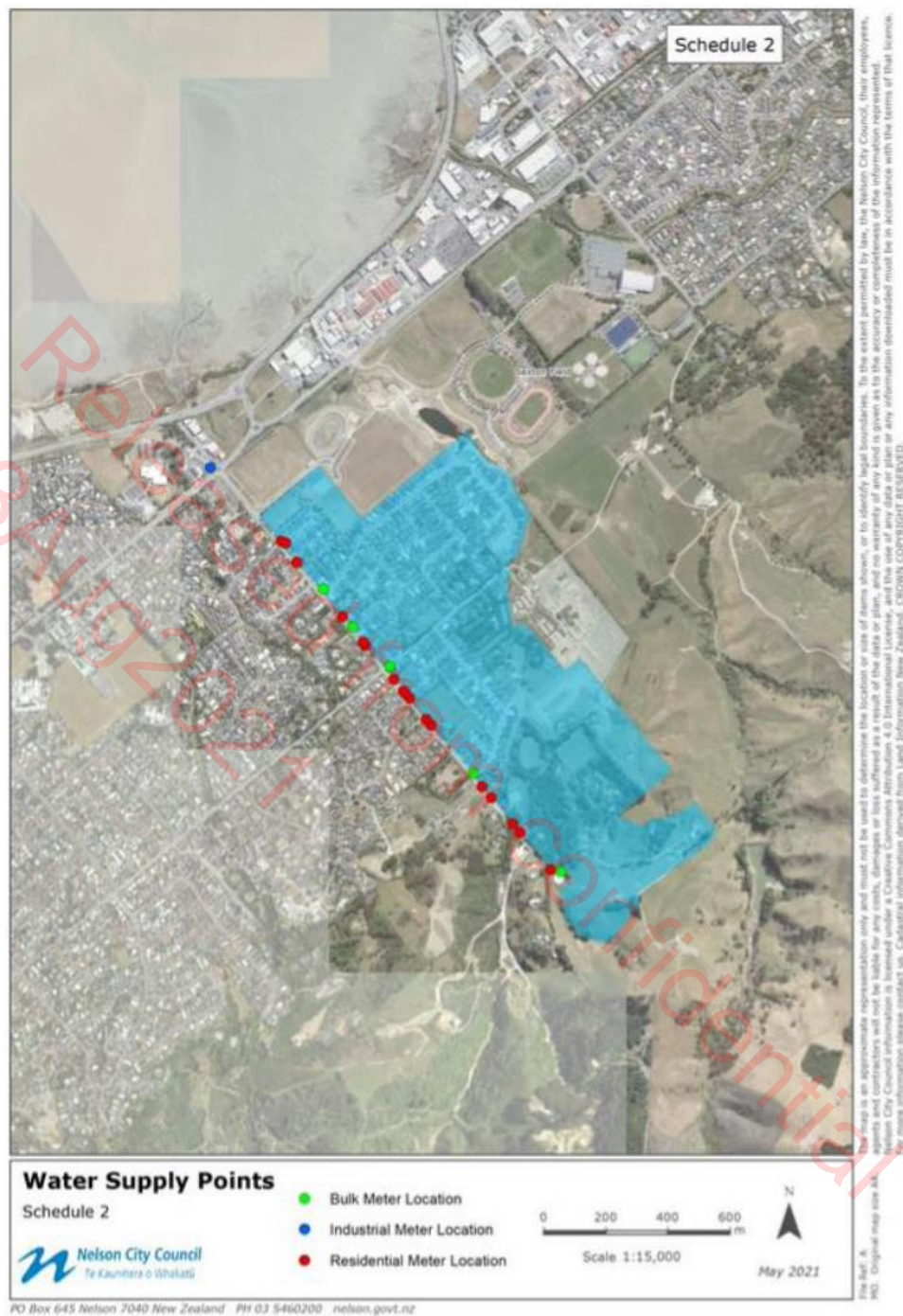
Scale 1:17,556



April 2021



Item 1: Nelson City Council - Tasman District Council Engineering Services Agreement and  
Nelson City Council - Tasman District Council Waimea Community Dam Funding  
Agreement: Attachment 4



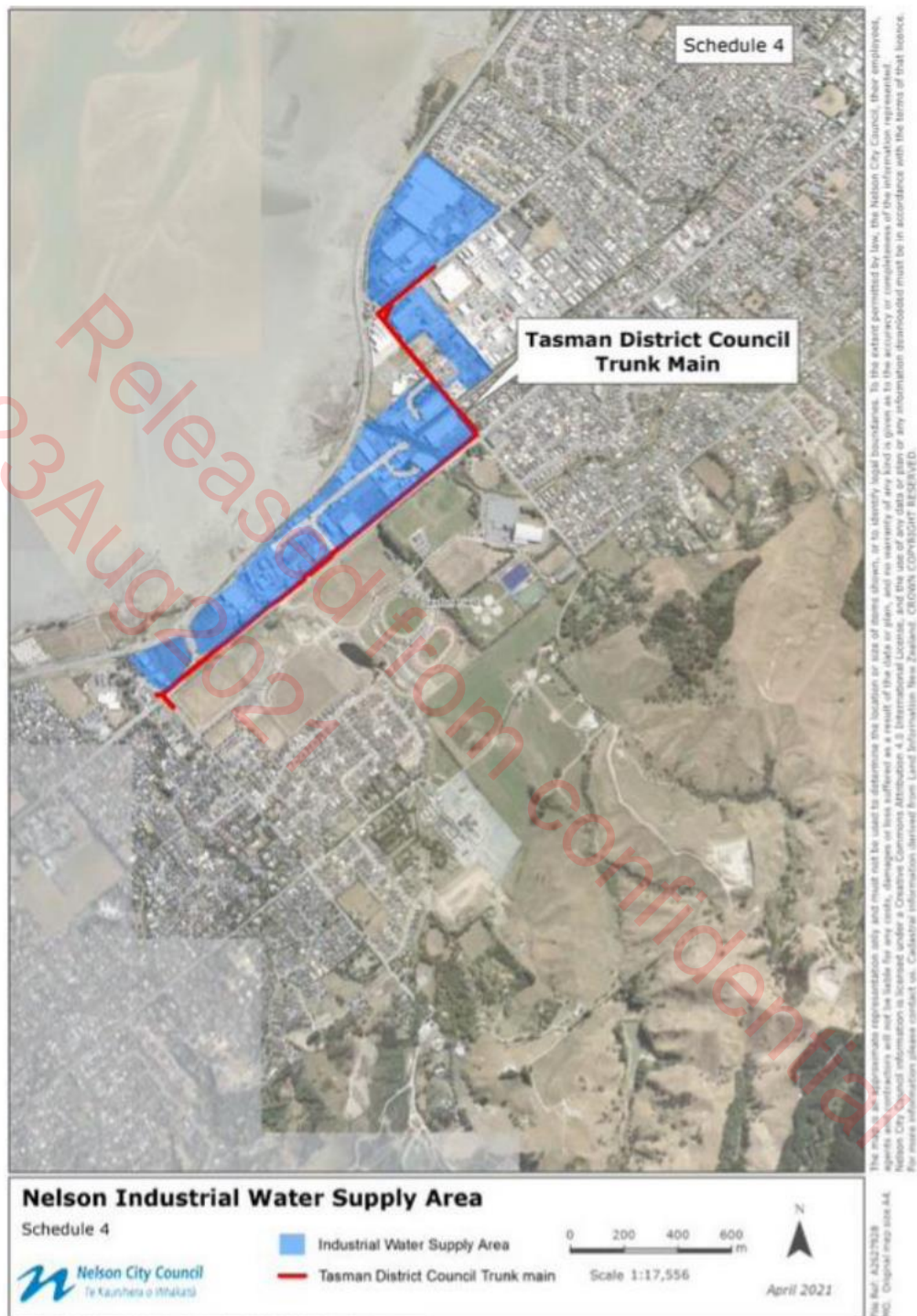
Updated 4 May 2021. PR.

**Schedule 3 Nelson Industrial Water Supply Assets**  
**updated 27, 28 & 30 Apr 2021.**

<b>Water reticulation</b>	<b>m</b>
20 mm dia	30
25 mm dia	21
50 mm dia	336
100 mm dia	446
150 mm dia	578
200 mm dia	1051
<b>Valves</b>	<b>No</b>
20 mm dia	24
25 mm dia	10
40 mm dia	4
50 mm dia	8
80 mm dia	3
100 mm dia	5
150 mm dia	8
200 mm dia	18
<b>Fire hydrants</b>	21
<b>Backflow preventers</b>	<b>No</b>
20 mm dia	19
25 mm dia	10
32 mm dia	2
40 mm dia	2
50 mm dia	1
80 mm dia	1
<b>Water Meters</b>	<b>No</b>
20 mm dia	26
25 mm dia	16
32 mm dia	2
40 mm dia	3
50 mm dia	12
80 mm dia	1
100 mm dia	2
<b>Perimeter</b>	
<b>Trunkmain</b>	<b>m</b>
150 mm dia	194
200 mm dia	60
300 mm dia	632
375 mm dia	839
450 mm dia	368

Item 1: Nelson City Council - Tasman District Council Engineering Services Agreement and  
 Nelson City Council - Tasman District Council Waimea Community Dam Funding  
 Agreement: Attachment 4

500 mm dia	312
<b>Valves</b>	<b>No</b>
75 mm dia	2
150 mm dia	2
300 mm dia	2
375 mm dia	5
<b>Fire hydrants</b>	7



Updated 4 May 2021.



**Attachment**

**Schedule 5**

**Roding Water Supply Water Costs Allocation**

**Current Agreement**

Water Charging Cost Breakdown

TDC Share

Components Used

Roding Headworks	5.68%
Roding tunnel and pipeline	5.68%
Marsden PS	10.98%
Foothills Raw Water Pipeline	5.68%
WTP	2.75%
WTP Brook Street	2.55%
Brook St (Hillside Lane - Bronte)	2.76%
Bronte St (Tasman - Rutherford)	2.91%
Rutherford St (Bronte - Van Diemen)	2.91%
Van Diemen (Rutherford - Waimea)	2.91%
Waimea (Van Diemen - Boundary)	5.31%
Boundary (Waimea - TT)	5.31%
TT – Annesbrook	5.93%
Annesbrook – Marsden	10.41%
Main Rd Pipeline (Marsden to Saxton)	22.67%
Main Rd Pipeline (Saxton to Orphanage Creek)	85.00%
Main Rd Pipeline (Orphanage Ck to Champion Rd)	100.00%
Overhead Allocation	6.64%
Share of Rate Requirement	2.43%
Example: Rate Requirement 2010/11	\$10,568,383
2.43% X \$10,568,383 = \$256,811	

TDC Cost per m3 excluding GST (based on 909 m3 per day) 2010/11 \$0.77

TDC Cost based on network operation and maintenance costs + water extraction and treatment costs = \$256,811 total.

#### Water Costs Allocation (Proposed)

Example: 2011/12 financial year:

<b>Recovery by Fixed Charge</b>	<b>O&amp;M</b>	<b>Depr</b>	<b>TDC Share</b>	
Roding headworks	\$28,633	\$43,100	5.68%	\$4,074
Roding tunnel and pipeline	\$6,496	\$71,560	5.68%	\$4,343
Marsden Valley pipeline	\$2,225	\$11,234	19.09%	\$2,569
Marsden Rd pipeline	\$740	\$3,705	100.00%	\$4,445
Main Rd pipeline (Marsden to Saxton)	\$3,029	\$8,959	22.67%	\$2,718
Main Rd pipeline (Saxton to Orphanage Creek)	\$223	\$627	85.00%	\$723
Main Rd pipeline (Orphanage CK to Champion Road)	\$1,680	\$4,133	100.00%	\$5813
<b>Recovery by Variable Charge</b>				
Pump Stations	\$216,357	\$96,140	10.98%	\$34,312
Foothills pipelines		\$60,973	5.68%	\$3,463
WTP	\$1,501,493	\$1,130,507	2.75%	\$72,380

Overheads	\$	2,476,448	6.64%	\$164,436
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Item 1: Nelson City Council - Tasman District Council Engineering Services Agreement and  
 Nelson City Council - Tasman District Council Waimea Community Dam Funding  
 Agreement: Attachment 4

Renewal of Resource Consent	TBA			
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Fixed Charge	\$24,777
Variable Charge \$/m3	\$0.83

Released from  
 23 Aug 2021  
 DRAFT  
 confidential

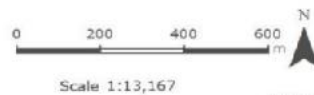
237430032103075 Confidential



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## Nelson Sewerage Services Area

Schedule 6



April 2021

PO Box 645 Nelson 7040 New Zealand PH 03 5460200 nelson.govt.nz

File Ref: 32620999  
Map: Original map 102 A4.

Updated 30 April 2021.



Item 1: Nelson City Council - Tasman District Council Engineering Services Agreement and  
Nelson City Council - Tasman District Council Waimea Community Dam Funding  
Agreement: Attachment 5



Office of the Mayor

Email [mayor@tasman.govt.nz](mailto:mayor@tasman.govt.nz)  
Phone 03 543 8444



tasman  
district council

Te Kaunihera o  
te tai o Aorere

1 March 2021

Mayor Rachel Reese  
Nelson City Council  
PO Box 6045  
Nelson

Via email – [Rachel.reese@ncc.govt.nz](mailto:Rachel.reese@ncc.govt.nz)

Tēnā koe Rachel

**Nelson City Council Funding Contribution to Waimea Dam**

Tasman District Council has resolved to formally request that Nelson City Council increase its original \$5 million funding contribution towards the Waimea Community Dam.

In November 2018 we were advised that Nelson City Council had declined the request to increase its contribution to the Waimea Community Dam after the finalised cost was determined to be much higher than estimated. Our Chief Executive wrote to your Chief Executive, Pat Dougherty again in December 2020 regarding this issue.

Since that time, project over-runs have further increased the cost to \$159 million which is higher than the proportion of costs allocated to Nelson City for assigned extractive capacity and a contribution to the economic, environmental and community benefits (approximately \$7.4 million for water supply and \$3 million for economic, environmental and community benefits).

After two consecutive years of drought, there is no question that water security is vital to the economic performance of those who live and work in Tasman. Many of those workers live in Nelson City and many Nelson-based businesses are reliant on the products and income generated by the horticulture and other industries for which the Waimea Dam will provide security.

An increase to \$10.474 million from your Council would realign the contribution proportionate to the benefits received and ensure a more equitable income as those benefits are currently being funded by Tasman District ratepayers. The current \$5 million funding proposal would only be sufficient for 67.7% of the water Nelson City Council is requesting (14,900 m<sup>3</sup> per day).

I formally request that Nelson City Council reconsider and increase its contribution to the Waimea Community Dam. I would be happy to provide further information that may be required to aid your Council in their decision.

Nāku noa

Tim King  
Mayor, Tasman District

Tasman District Council  
Email [info@tasman.govt.nz](mailto:info@tasman.govt.nz)  
Website [www.tasman.govt.nz](http://www.tasman.govt.nz)  
24 hour assistance

**Richmond**  
189 Queen Street  
Private Bag 4  
Richmond 7090  
New Zealand  
Phone 03 543 8400  
Fax 03 543 8524

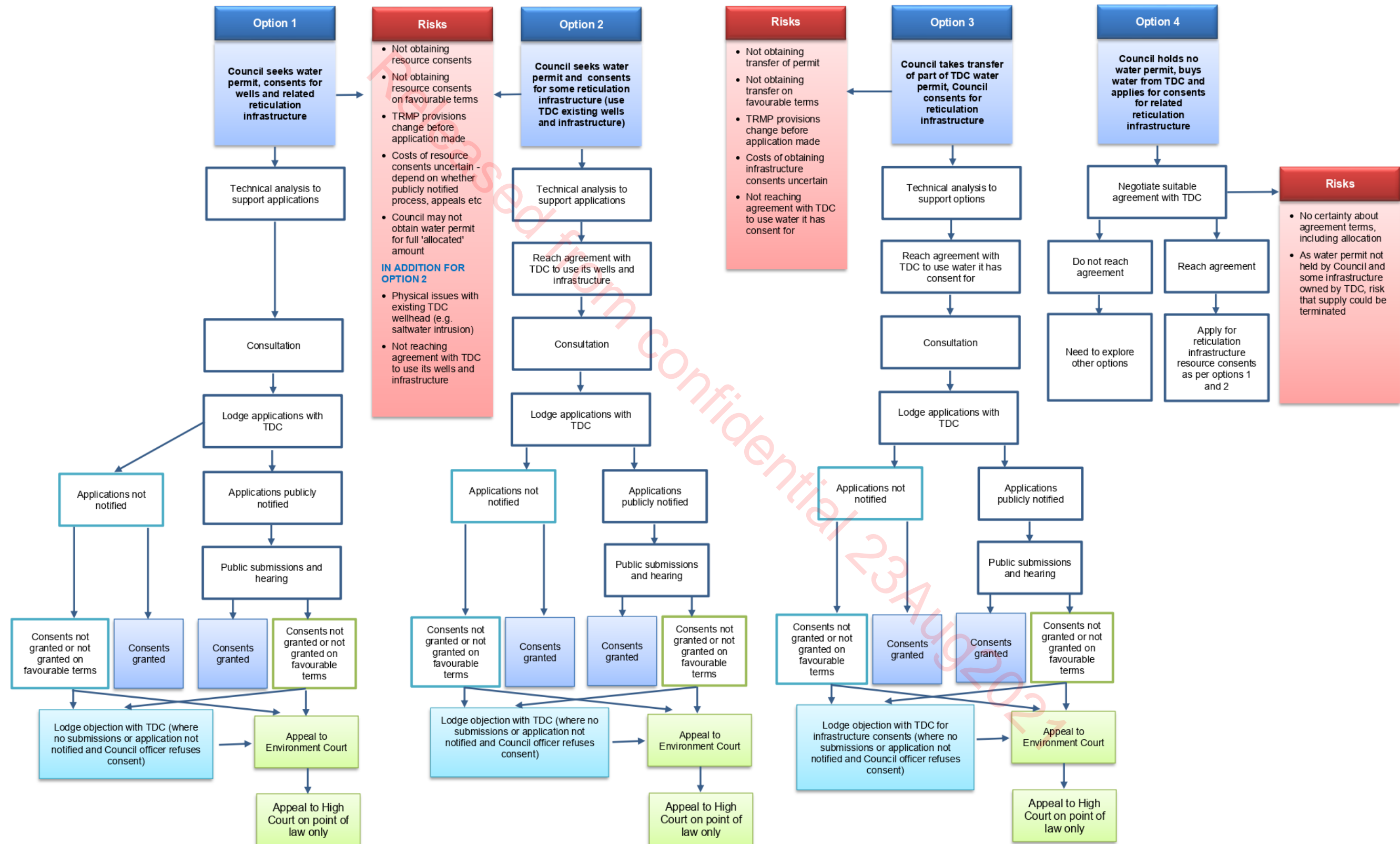
**Murchison**  
92 Fairfax Street  
Murchison 7007  
New Zealand  
Phone 03 523 1013  
Fax 03 523 1012

**Motueka**  
7 Hickmott Place  
PO Box 123  
Motueka 7143  
New Zealand  
Phone 03 528 2022  
Fax 03 528 9751

**Takaka**  
78 Commercial Street  
PO Box 74  
Takaka 7142  
New Zealand  
Phone 03 525 0020  
Fax 03 525 9972

A2602923

## Possible scenarios for Council to obtain water as a result of right to affiliate permits





EXECUTION VERSION

# Waimea Community Dam Funding Agreement

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## PARTIES

Tasman District Council

TDC

Nelson City Council

NCC

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Item 1: Nelson City Council - Tasman District Council Engineering Services Agreement and  
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Agreement: Attachment 7

Russell  
McLeagh

AGREEMENT dated

2021

## PARTIES

**Tasman District Council** a local authority having its principal office at 189 Queen Street, Richmond  
("TDC")

**Nelson City Council** a local authority having its principal office at 110 Trafalgar Street, Nelson  
("NCC")

## INTRODUCTION

NCC has agreed to provide \$5 million of funding to TDC in relation to the Waimea Community Dam project, pursuant to exchange of correspondence between the parties in November 2018. The parties wish to enter into this agreement to formalise the arrangements set out in the correspondence (subject to the terms of this Agreement).

## AGREEMENT

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions: In this Agreement:

**"Affiliate"** has the meaning given to it in the Project Deed, being as at the date of this Agreement, "the process by which a permit to take and use water becomes Affiliated under the TRMP".

**"Affiliated Permit"** means a permit to take and use water that is treated as "Affiliated to" the Dam under and for the purposes of the TRMP, and **"Affiliated"** will be interpreted accordingly".

**"Business Day"** means a day (other than a Saturday or Sunday) on which banks are open for general business in the Tasman district.

**"Dam"** means the Waimea Community Dam.

**"Entitlement Amount"** means a maximum of 22,000m<sup>3</sup> of water per day (being up to 515 hectares equivalent), subject to any reduction pursuant to clause 4.1(d).

**"Financial Close"** has the same meaning given to it by the Project Deed.

**"LGA"** means the Local Government Act 2002.

**"Operation Commencement Date"** means that date on which WWL determines that the Dam is fully operational and commences the release of water from the Dam in accordance with the resource consents held in respect of the Dam.

**"Project Deed"** means the project deed for the Dam between TDC, WIL, Crown Irrigation Investments Limited and WWL dated 12 December 2018.

**"Project Facility Agreement"** means the project facility agreement for the Dam between WWL, WIL and Crown Irrigation Investments Limited and dated on or about 12 December 2018.

**"Related Company"** means, in respect of a company, a related company of that company in terms of section 2(3) of the Companies Act 1993 (or any company that would be a related company of that company in terms of section 2(3) if in that section the expression 'company' included a body corporate).

**"Related Person"** means:

- (a) In respect of a company, any company that is a Related Company of that company.
- (b) In respect of a 'local authority', any 'council-controlled organisation', 'council-controlled trading organisation' or 'council organisation' (each as defined by section 6 of the LGA) controlled by that local authority, or any local authority that is established as a unitary authority and which will act as the territorial authority in the area where that local authority previously carried out 'activities' (as defined by section 5 of the LGA).

**"Shareholders' Agreement"** means the Shareholders' Agreement for WWL and between TDC and WIL dated 12 December 2018.

**"TRMP"** has the meaning given to it in the Project Deed, being "the Tasman Resource Management Plan of TDC prepared in accordance with the Resource Management Act 1991, as at the date of this deed".

**"WIL"** means Waimea Irrigators Limited, with company number 6091410 and NZBN 9429042548898, and whose registered office is 491 Nayland Road, Stoke, Nelson 7011, New Zealand.

**"WWAA"** means the wholesale water augmentation agreement between TDC and WWL dated 12 December 2018.

**"WWL"** means Waimea Water Limited, with company number 7104293 and NZBN 9429047158696, and whose registered office is at Findex, 20 Oxford Street, Richmond 7020.

1.2 **Interpretation:** In this Agreement, except where the context otherwise requires:

- (a) words importing the singular shall include the plural and vice versa;
- (b) a reference in this Agreement to any document or agreement is to that document or agreement as amended, novated, supplemented or replaced;
- (c) a reference to the word 'include' or 'including' is to be interpreted without limitation;
- (d) any schedule to this Agreement shall have the same effect as if set out in the body of this Agreement;

Item 1: Nelson City Council - Tasman District Council Engineering Services Agreement and  
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- (e) clause headings are inserted for reference only and shall not affect the interpretation of this Agreement;
- (f) words and expressions defined are indicated by capital letters for convenience. The absence of a capital letter shall not imply that the word or expression is used with a different meaning from that given by its definition; and
- (g) a reference to any statute or regulation includes that statute or regulation as amended from time to time and any statute or regulation in substitution thereof.

## 2. TERM AND TERMINATION

2.1 **Term:** This Agreement shall commence on the date it is signed by all parties and, unless terminated earlier in accordance with this Agreement, expire on the date that is the earlier of:

- (a) the date that is 40 years from the Operation Commencement Date;
- (b) the date on which NCC becomes the holder of the Transfer Shares; and
- (c) the winding up of WWL or the cessation of its business (except where its rights and obligations in respect of the Dam are assigned or novated to a Related Person of any of the parties).

2.2 **Resource Consent:** The parties acknowledge that the resource consent for the construction of the Dam has a consent period of 10 years from the date of commencement and the operation of Dam has an initial consent term of 35 years from the date of commencement. TDC agrees that it will exercise its rights under the WWAA to procure WWL to take all reasonable steps to:

- (a) renew the resource consents that relate to the construction and operation of the Dam (insofar as they can be renewed) prior to their expiry; and
- (b) apply for a new resource consent that relates to the construction and operation of the Dam should a resource consent expire for any reason and which prevents the construction or operation of the Dam.

2.3 **Termination:** This Agreement may be terminated:

- (a) at any time by written agreement between the parties;
- (b) on three months' notice in writing by TDC to NCC if WWL decides not to continue with construction of the Dam or if, once the Operation Commencement Date has passed, the Dam ceases to be operated in accordance with the resource consents held by WWL (or any Related Person of the parties) in respect of the Dam (and no further resource consents are issued in respect of the Dam's usage by any Related Person of the parties);
- (c) immediately by written notice from TDC to NCC where NCC fails to make any payment when due under this Agreement, and does not rectify such failure within 30 Business Days of TDC providing written notice to NCC requiring such rectification; and

- (d) immediately by written notice from NCC to TDC where TDC fails to or is unable to grant the right to Affiliate permits under clause 4.1.

2.4 **Accrued rights:** Termination of this Agreement for any reason is without prejudice to the rights and remedies of any party against the other party arising out of any prior breach of this Agreement.

2.5 **Survival:** The expiry or termination of this Agreement will not affect the rights and obligations of the parties set out in this clause 2.5 and clauses 2.4, 3.2, 3.3, 4.3, 4.7(d), 4.8, 6, 7, 8, 9 and 10 which are intended to survive the termination or expiry of this Agreement.

### 3. NCC OBLIGATIONS

3.1 **NCC payment:** On 1 June 2021 (or such other date as the parties may agree in writing), NCC will pay TDC a non-refundable amount of \$5,000,000 (plus GST, if applicable) ("**NCC Payment**") in cleared and immediately available funds, by depositing such amount into the bank account of TDC (account number 12 3193 0002048 03) or such other bank account as TDC nominates in writing to NCC. The NCC Payment will be made without any set-off or other deduction.

3.2 **Late payment interest:** If NCC fails to pay any amount payable under this Agreement on the due date for payment, NCC will pay interest on such amount to TDC at the rate of 6% per annum, calculated on a daily basis and compounding monthly.

3.3 **No other liability for Dam:** For the avoidance of doubt, nothing in this Agreement imposes on NCC any obligation or liability:

- (a) under the credit support provisions in the Project Deed, including any obligation to refinance any loan taken out by WWL from Crown Irrigation Investments Limited or TDC, or to meet any funding shortfall if any contributions from Waimea Irrigators Limited or any other party are not forthcoming;
- (b) to make any additional payments relating to the construction of the Dam (other than the payments referred to in this Agreement) if the Dam project costs are higher than estimated at Financial Close (as defined in the Project Deed). Equally, NCC will not share in any savings if the final Dam project costs are lower than those estimated; or
- (c) to pay for any operating costs associated with the Dam (other than as part of the water charges contemplated by this Agreement), unless NCC exercises the option in clause 5 below, which would lead to NCC having obligations under a wholesale water augmentation agreement between NCC and WWL in place of the WWAA, in which case, NCC will have obligations under the terms of that agreement.



**4. ACCESS TO WATER**

**4.1 Right to be Affiliated:**

- (a) Subject to subclause (b) below, clause 3 and the other provisions in this clause 4, TDC, from the later of:
- (i) the Operation Commencement Date; and
  - (ii) the date NCC pays TDC the amount set out in clause 3.1 in full,
- grants NCC the right to Affiliate permits in accordance with the WWAA and the TRMP (subject to NCC meeting the TRMP provisions applicable at the time), for up to the Entitlement Amount from the "Waimea Plains Water Management Zones" as defined in the TRMP.
- (b) TDC warrants, as at the date of this Agreement, that it has the ability and authority to grant the right to Affiliate permits for the full Entitlement Amount under clause 4.1(a) and that entry into this Agreement does not breach TDC's obligations under clause 19.1 of the WWAA (Permitted Transfers).
- (c) Subject to clause 4.8, TDC undertakes that it will do all things, and will exercise its rights as a party to the WWAA to procure that WWL will do all things, that are required to give effect to the granting of the right to Affiliate permits under clause 4.1(a).
- (d) If at any time during the term of this Agreement:
- (i) TDC's entitlement to be Affiliated or to take water under the WWAA is, for any reason, reduced from the level it was entitled to as at the date of the WWAA; and/or
  - (ii) NCC enters into a wholesale water augmentation agreement with WWL ("**NCC WWAA**"),
- then (notwithstanding the provisions of subclause (a)) the Entitlement Amount shall be reduced proportionately to the reduction of TDC's entitlement and/or the amount of NCC's entitlement under the NCC WWAA (as applicable), without any need for this Agreement to be varied. Such reduction shall also apply to the number of Transfer Shares to which NCC is entitled for the purposes of clause 5.1 below.

**4.2 Consequence of exercise of option:** NCC's rights to Affiliate permits under clause 4.1 ceases following the exercise of the option set out in clause 5 by NCC and NCC becoming the holder of the Transfer Shares (as defined in clause 5.1) below.

**4.3 Exclusions:** TDC is not responsible for:

- (a) physically delivering water to NCC or for any distribution of water;
- (b) supplying any water to NCC or to any other person;
- (c) any water offtake structures or infrastructure (including for any construction, upgrade, operation, maintenance or upgrade of such structures or infrastructure);

- (d) treating, filtering or otherwise dealing with the water to enable it to be used for any particular purpose; or
- (e) any liability for any health issues, regulatory requirements or other or expenses required or necessary to ensure that any water taken pursuant to this Agreement is potable and safe for household, domestic or other use.

4.4 **Non-interference:** Subject to clauses 4.1(b), 4.2, 4.7(d) and 4.8, TDC will not, during the term of this Agreement, in its capacity as shareholder of WWL and head water user under the WWAA, take any action or omit to take any action that is reasonably likely to result in NCC's rights (either current or future) under this Agreement, from being materially adversely affected without the prior written consent of NCC (not to be unreasonably withheld), including, but not limited to, any of the following actions:

- (a) Altering or revoking WWL's constitution;
- (b) Terminating or amending the Shareholders' Agreement;
- (c) Terminating or amending the WWAA;
- (d) Intentionally failing to comply with, or, in its capacity as shareholder of WWL, intentionally failing to exercise its voting rights to prevent WWL from failing to comply with, a resource consent that relates to the Dam (this is subject to NCC's acknowledgment that the resource consent is held by WWL and not by TDC); and
- (e) Failing to comply with its obligations under the Project Deed or Project Facility Agreement.

4.5 **Access to water:** Subject to clause 4.7(d), TDC will exercise its rights in its capacity as shareholder of WWL as may be reasonably required to allow NCC to have access to the water NCC will be entitled to either:

- (a) under any permits Affiliated by TDC pursuant to clause 4.1 and the TRMP (up to the Entitlement Amount); or
- (b) by becoming the holder of the Transfer Shares following the exercise of the option set out in clause 5.

4.6 **Access to information:** Subject to any confidentiality obligations by which TDC is bound, TDC will, upon NCC's written request, as part of due diligence prior to NCC exercising the share option in clause 5.1, provide all information and documents to NCC that NCC reasonably requires in order to make a determination about whether to exercise the share option in clause 5.1.

4.7 **Restrictions:** Notwithstanding clause 4.1 above and any other provision of this Agreement, the parties acknowledge that the Dam is owned and operated by WWL, and that TDC is, in its capacity as shareholder of WWL and head water user under the WWAA, subject to and must comply with the terms of the WWAA and all applicable laws. Accordingly:

- (a) nothing in this Agreement affects or limits NCC's obligations to obtain all consents, permits and other approvals (including from TDC in its regulatory capacity), as necessary to enable NCC to lawfully take and use water as contemplated under this Agreement, and NCC shall be responsible for meeting those obligations,

including prior to taking any water pursuant to a permit Affiliated through the rights granted under this clause 4 where required by law to do so;

- (b) TDC is unable to make any warranties in relation to the availability of water pursuant to this Agreement and/or the quality of water taken (or able to be taken) by NCC under permits Affiliated through the rights granted under this Agreement and the WWAA;
- (c) access to and the taking of any water pursuant to permits Affiliated in accordance with this Agreement will be subject to the terms of the WWAA and all applicable laws (including those enforceable by TDC in its regulatory capacity);
- (d) notwithstanding any other provision of this Agreement, TDC will not be liable to NCC for, or in relation to, any of the matters or circumstances described above, or for any act or omission by TDC:
  - (i) to the extent that such act or omission is in connection with:
    - (aa) TDC participating in the central government's 'Three Waters' reform ("**Reform**");
    - (bb) TDC's transfer of TDC's shares in WWL and/or novation of any agreement relating to WWL to which TDC is a party to any entity established or utilised by central government in connection with the Reform; or
    - (cc) required by any applicable law or is required by central government (including through Crown entities or agencies); or
  - (ii) where TDC has no practical discretion not to undertake that act or allow the omission or to determine the consequences of that act or omission.

4.8 **TDC's regulatory capacity:** Nothing in this Agreement requires TDC to exercise (or refrain from exercising) any of its regulatory rights or powers in a particular way or to achieve a particular outcome, and TDC will have no liability whatsoever to NCC (whether in contract, tort or otherwise) for any costs, claims, demands, expenses, losses and liabilities of whatsoever nature in connection with TDC's actions or omissions as a regulatory body.

## 5. SHARE OPTION

5.1 **Option:** At any time following payment being made in accordance with clause 3.1, NCC may give written notice to TDC requesting that TDC transfers to NCC (from TDC's then existing shareholding in WWL) the number of WWL shares ("**Transfer Shares**") required to Affiliate one or more permits so as to have the right to take the amount of water set out in such notice, up to the Entitlement Amount. Promptly following receipt of such notice and subject to clause 5.3 and completion of all relevant actions contemplated in clause 5.2(a) below, TDC will, as soon as reasonably practicable and without charging NCC, transfer to NCC the Transfer Shares, provided that TDC will only be required to transfer a maximum of 10% of the total shares in WWL (as per clause 7.14(e)(ii) of WWL's constitution). NCC may only provide one notice in respect of the Transfer Shares, and if such notice is given in respect of less than the Entitlement Amount, then NCC will have no rights to be transferred any further WWL shares in respect of the remainder of the Entitlement Amount.

5.2 **Other actions:** If NCC elects to exercise the option under clause 5.1 above:

- (a) the associated transfer of the Transfer Shares is subject to the requirements of the Dam project documentation (including the Shareholders' Agreement) and NCC shall be required (where applicable, prior to the date of transfer of the Transfer Shares) to:
  - (i) accede to the Shareholders' Agreement;
  - (ii) take a novation/assignment of a corresponding portion of rights and obligations under the WWAA, including, to avoid doubt, the obligations to pay water charges under that agreement; and
  - (iii) subject to and without limiting clause 3.3, comply with the other relevant requirements of the Shareholders' Agreement and the WWAA; and
- (b) NCC may jointly with TDC appoint a director to the WWL board in accordance with the provisions and processes set out in the then current TDC/NCC joint policy on the Appointment of Directors and Trustees to Council Organisations.

5.3 **Other considerations:** NCC acknowledges that:

- (a) The Transfer Shares have been issued under the terms of WWL's then current constitution and Shareholders' Agreement, and nothing in this Agreement entitles NCC or TDC to require the Transfer Shares to be issued on any other terms.
- (b) The option under clause 5.1 above is non-transferrable and may only be exercised by, and for the benefit of, NCC (except where NCC is replaced by a local or territorial authority that takes over the 'activities' (as defined by section 5 of the LGA) of NCC).
- (c) TDC is not liable to NCC for any aspect of the operation of WWL.

5.4 **Necessary actions:** Subject to obtaining the agreement of the other parties which are required in respect of the actions or documents in question, the parties will use all reasonable endeavours to take all reasonably necessary actions and enter into all reasonably necessary documents to give effect to NCC becoming a shareholder in WWL, including, but not limited to, amending the Shareholders' Agreement or WWAA where reasonably required and agreed to by all the relevant parties.

## 6. CONFIDENTIALITY

6.1 **Confidentiality:** The parties must always keep the information contained in this Agreement and any other information related to the arrangements set out in this Agreement (together "**Confidential Information**") confidential and may not disclose it, or copy or use it for any purpose other than that for which it was provided, unless:

- (a) the party has obtained the other party's prior written consent;
- (b) such disclosure is required by law (including the Local Government Official Information and Meetings Act 1987 – in this regard, the parties acknowledge that



disclosure of this Agreement may be necessary and desirable in the public interest);

- (c) such Confidential Information is in the public domain other than as a result of a breach of this Agreement; or
- (d) the disclosure is to WIL, WWL, Crown Irrigation Investments Limited and/or that entity's or that entity's respective professional advisors, and such disclosure is reasonably required to consummate the arrangements contemplated hereby (provided that any persons receiving the Confidential Information agree to the confidentiality restrictions contained herein or are otherwise subject to equivalent confidentiality obligations).

6.2 **Required disclosure:** If either party is legally required to disclose Confidential Information it must, as soon as is practical and, where possible, prior to any such disclosure, notify the other party of the requirement to disclose. Disclosure must be restricted to such extent that the legal advisors of the party seeking to make the disclosure reasonably believe must be disclosed by law, and the receiving party shall exercise its best efforts to co-operate with the disclosing party in obtaining assurances that confidential treatment will be accorded to that portion of the Confidential Information required to be disclosed.

6.3 **Return/destruction of information:** Except as required by any applicable legislation (including the Public Records Act 2005), the receiving party will promptly, at the disclosing party's election for any reason, either:

- (a) return to the disclosing party; or
- (b) destroy or erase, or procure the destruction or erasure of,

the disclosing party's Confidential Information (whether in material form or in any electronic information storage and retrieval system or in any other storage medium) and if requested by the disclosing party certify as to such return or destruction, provided that the receiving party may retain one copy of such Confidential Information of the disclosing party for legal archival reference for any relevant period of limitation only, on the condition that such Confidential Information is held solely for that purpose, and otherwise held in accordance with the terms of this clause 6.

## 7. DISPUTE RESOLUTION

7.1 **Dispute:** In the event that a dispute or difference ("**Dispute**") arises between the parties concerning any matter arising under this Agreement, either party may require, by written notice to the other party ("**Dispute Notice**"), that the Dispute is resolved pursuant to this clause 7.

7.2 **Negotiation:** Upon receipt of the Dispute Notice, the parties shall meet and negotiate in order to resolve the Dispute.

7.3 **Mediation:** If the Dispute is unable to be resolved by negotiation within 20 Business Days of the Dispute Notice, either of the parties may, by written notice, refer the Dispute to mediation. If a dispute has been referred to mediation then the parties shall endeavour to agree on a mediator and shall submit the matter in dispute to the mediator. The mediator shall discuss the matter with the parties and endeavour to resolve it by agreement between

the parties. All discussions in mediation shall be without prejudice and shall not be referred to in any later proceedings. The parties shall each bear the party's own costs in the mediation, and shall each pay half the costs of the mediator.

7.4 **Referral to arbitration:** The matter in dispute may be referred to arbitration by either party giving notice in writing to the other party if:

- (a) the parties have been unable to agree upon a mediator within 10 Business Days of the dispute being referred to mediation; or
- (b) no agreement has been reached within 20 Business Days of the dispute being referred to mediation.

7.5 **Arbitration:**

- (a) If the Dispute is referred to arbitration, such arbitration shall be undertaken by a sole arbitrator for resolution if the parties agree on one, or if they cannot agree on the appointment of an arbitrator within 10 Business Days, an arbitrator will be appointed by the President for the time being of the Nelson Branch of the New Zealand Law Society (or his or her nominee) at the request of either or both of them.
- (b) Where the matter has previously been referred to mediation, the mediator shall not be called by either party as a witness, and no reference shall be made to the determination, if any, issued by the mediator in respect of the matter in dispute, during any subsequent arbitration on the matter in dispute.
- (c) The parties agree that the provision of the Second Schedule of the Arbitration Act 1996 will apply to any arbitration, except clauses 1, 5 and 7, which shall not apply. The decision of the arbitrator will be final and binding on the parties, and either of them may enforce such award in accordance with article 35 of the First Schedule of the Arbitration Act 1996.

7.6 **Location:** Any mediation or arbitration proceedings under this clause 7 shall be conducted in Nelson, New Zealand.

## 8. FORCE MAJEURE

8.1 **Notice and relief:** If any party is wholly or partly unable to carry out that party's obligations under this Agreement (other than any obligation to make a monetary payment) due to a cause which is not that party's fault and which is beyond that party's control including, but not limited to, acts of God, strikes, lockouts or other industrial disturbances, unavoidable accident, fire, flood, earthquake, explosion or the laws, rules, regulations or orders of any duly constituted governmental authority (each, a "**Force Majeure Event**"), that party must give to the other party prompt written notice of the Force Majeure Event and, insofar as is known, the probable extent to which that party shall be unable to perform or shall be delayed in performing any obligation, whereupon such obligation will be suspended for as long as that party is prevented from performing the obligation by the Force Majeure Event.

8.2 **Reasonable steps:** The party affected by a Force Majeure Event must take all reasonable steps to reduce the effects of and eliminate the Force Majeure Event and must resume performance of any suspended obligation as promptly as practicable.

**9. THREE WATERS REVIEW**

9.1 **'Three Waters':** In the event of any law or regulation being proposed, passed or amended in connection with the Reform, and such law or regulation adversely affects or is reasonably likely to adversely affect NCC's rights under this Agreement:

- (a) TDC and NCC will engage with each other during the Reform's consultation process and will use reasonable endeavours to ensure that NCC's access to water and rights under this Agreement are not adversely affected, provided that TDC will not be required to take any action which may (in TDC's reasonable opinion) be contrary to:
  - (i) TDC's interests or obligations as a regulatory body; or
  - (ii) TDC's commercial interests, in:
    - (aa) participating in the Reform;
    - (bb) transferring TDC's shares in WWL; and/or
    - (cc) novating any agreement relating to WWL to which TDC is a party to any entity established or utilised by central government in connection with the Reform; and
- (b) TDC, in its capacity as shareholder of WWL, will not enter into, nor will it permit WWL to enter into, any agreement or arrangement with central government in connection with the Reform that adversely affects, or is likely to adversely affect, NCC's access to water and rights under this Agreement without first consulting NCC and seeking its views.

9.2 **NCC voting rights:** Where NCC has become a shareholder of WWL through the exercise of its option under clause 5.1, NCC will:

- (a) not exercise its voting rights as a WWL shareholder in a manner that is directly or indirectly contrary to any action, proposed action or submission by TDC, or which TDC is in favour of, in relation to how the Reform impacts WWL, TDC or TDC's interests in WWL (including not exercising such voting rights where doing so would give rise to a right to have NCC's shares in WWL purchased by WWL under section 110 of the Companies Act 1993 in relation to the above);
- (b) exercise its voting rights as a WWL shareholder to support (in such manner as TDC may request in its sole discretion) any action, proposed action or submission by TDC, or which TDC is in favour of, in relation to how the Reform impacts WWL, TDC or TDC's interests in WWL; and
- (c) not, within 10 years after Financial Close, exercise its voting rights where doing so would give rise to a right for NCC to have its shares in WWL purchased by WWL under section 110 of the Companies Act 1993.

For the avoidance of doubt, nothing in this clause 9.2, requires NCC to exercise (or refrain from exercising) any of its regulatory rights or powers in a particular way or to achieve a particular outcome.

- 9.3 **Successors:** Clause 9.2 binds the successors in title to NCC for the benefit of TDC and the successors in title to TDC.
- 9.4 **Severability:** If any part of this Agreement becomes invalid, unenforceable or in conflict with any law or regulation passed or amended in connection with the Reform, the remainder of this Agreement will continue to be binding on the parties, and the following will apply:
- (a) Each party waives its rights against the other party, and will not make any claim against the other party, in respect of any part or provision of this Agreement which has become invalid or unenforceable as a result of or in connection to the Reform; and
  - (b) If any party incurs or suffers any costs, losses, claims, demands, liabilities, payments, charges and expenses in relation to this Agreement as a result of or in connection to the Reform, that party will bear solely such costs and shall not claim, or attempt to claim, any costs from the other party.

## 10. GENERAL

- 10.1 **Good faith:** Without limiting the rights and entitlements of each party under the terms of this Agreement, the parties shall act reasonably and in good faith towards each other in respect of all dealings or matters under, or in connection with, this Agreement.
- 10.2 **Variation:** This Agreement may not be varied except by written agreement signed by the parties.
- 10.3 **Assignment:** Neither party may transfer any of its rights or obligations under this Agreement except to its successor that is a local authority under the LGA.
- 10.4 **Entire agreement:** This Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement and supersedes and cancels any other previous agreement, understanding, or arrangement, whether written or oral.
- 10.5 **Waiver:** Any delay, failure or forbearance by a party to exercise in whole or in part any right, power or remedy under, or in connection with this Agreement shall not operate as a waiver of such right, power or remedy. A waiver of any breach of any of the provisions of this Agreement shall not be effective unless that waiver is in writing and signed by the party against whom that waiver is claimed. A waiver of any breach shall not be, or be deemed to be, a waiver of any other or subsequent breach.
- 10.6 **Counterparts:** This Agreement may be signed in any number of counterparts all of which, when taken together will constitute one and the same instrument. A party may enter into this Agreement by signing a counterpart copy and sending it to the other party, including by e-mail.
- 10.7 **Governing law:** This Agreement is governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of New Zealand courts in respect of any dispute arising out of or in connection with this Agreement.



Item 1: Nelson City Council - Tasman District Council Engineering Services Agreement and  
Nelson City Council - Tasman District Council Waimea Community Dam Funding  
Agreement: Attachment 7



**SIGNATURES**

Signed by **Tasman District Council** by its duly  
appointed executives:

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Executive's signature

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Executive's signature

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Executive's full name

\_\_\_\_\_  
Executive's full name

Signed by **Nelson City Council** by its duly  
appointed executives:

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Executive's signature

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Executive's signature

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Executive's full name

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