

# Freshwater Improvement Fund

## DEED OF FUNDING



*Ministry for the*  
**Environment**  
*Manatū Mō Te Taiao*

### PART A: PROJECT AND PARTIES

PART A: PROJECT AND PARTIES		
DEED OF FUNDING	The Recipient has applied and been approved for a funding grant from the Freshwater Improvement Fund, administered by the Ministry. The grant is subject to the terms of this Deed of funding. This Deed is made up of the following parts:  1. Part A: Project and Parties 2. Part B: Special Terms 3. Part C: General Terms 4. Any Schedules and Annexures attached to this Deed or incorporated by reference.	
PROJECT NAME	Waimea Water Augmentation Project	
DEED NUMBER	22923	
DURATION	Commencement Date:	1 July 2019
	Expiry Date:	The date that is two calendar years after the Commencement Date.
PROJECT PURPOSE	The purpose for which the grant is provided is:  The purpose of the project is to improve and enhance environmental minimum flows in the Waimea River and support the public good component through the construction of Waimea Community Dam. The dam will provide improved water security of supply, and improved minimum flows in the Waimea River.	
SUMMARY OF KEY PROJECT REQUIREMENTS	The Work Programme for the Project is attached as Annexure 1. The summary of key requirements: the Project objectives, activities and funding for each project year are set out in Work Programme.	
PARTIES		

<b>MINISTRY</b>	<b>THE SOVEREIGN</b> in right of New Zealand, acting by and through the <b>Secretary for the Environment</b>	
<b>RECIPIENT</b>	Full legal name: Tasman District Council	
	Trading name (if different):	
<b>RECIPIENT CONTACT DETAILS</b>	Postal address: Private Bag 4, Richmond, Nelson 7050	
	Physical address: 189 Queen Street, Richmond	
	<b>MAIN CONTACT PERSON</b>	<b>BACKUP CONTACT PERSON</b>
	<b>Name:</b> Dennis Bush-King <b>Title:</b> Environment and Planning Manager <b>Phone:</b> 9(2)(a) <b>Mobile:</b> 9(2)(a)  <b>Email:</b> 9(2)(a)	<b>Name:</b> Mike Drummond <b>Title:</b> Corporate Services Manager  <b>Phone:</b> 9(2)(a) <b>Mobile:</b> 9(2)(a)  <b>Email:</b> 9(2)(a)
<b>MINISTRY FOR THE ENVIRONMENT DETAILS</b>	<b>MAIN CONTACT PERSON</b>	<b>BACKUP CONTACT PERSON</b>
	<b>Name:</b> Julia Price <b>Title:</b> Analyst <b>Phone:</b> 9(2)(a) <b>Email:</b> Julia.price@mfe.govt.nz	<b>Name:</b> Rob Schick <b>Title:</b> Senior Analyst <b>Phone:</b> 9(2)(a) <b>Email:</b> rob.schick@mfe.govt.nz
	<b>Address:</b> Environment House, 23 Kate Sheppard Place, Wellington 6011 PO Box 10362 Wellington 6143	

## PART B SPECIAL TERMS

### 1. Condition precedent:

- (a) The commencement of this Deed is conditional upon the parties to this Deed signing Terms of Reference in a form that is acceptable to the Ministry in all respects in order to establish the Governance Group.
- (b) The condition in special term 1(a) is for the benefit of the Ministry and may only be waived by the Ministry on express notice in writing to the Recipient.
- (c) If the condition in special term 1(a) has not been satisfied (or waived by the Ministry) on or before 20 Working Days after this Deed is signed or such later date agreed by the Ministry, then this Deed is voidable at the election of the Ministry by notice in writing to the other parties to this Deed.
- (d) Upon this Deed becoming void, no Party to it will have any right or obligation to any other Party.

### 2. Terms of Reference:

- (a) If the Ministry requires the establishment of a Governance Group and/or a Project Board, the Parties must comply with the Terms of Reference.
- (b) The Terms of Reference for the Governance Group must include the functions, make-up and procedure of the Governance Group, including:
  - (i) the following functions of the Governance Group:
    - (A) providing overall guidance and direction to the Project;
    - (B) making recommendations to Project Executive to support any decision that will have a material impact on the Project;
    - (C) overseeing financial reporting and health and safety practices in relation to the Project;
    - (D) providing assistance or information to the Parties in relation to Ministerial and Parliamentary questions and requests under the Official Information Act 1982 and Local Government Official Information and Meetings Act 1987 as required;
    - (E) acting as a key professional forum to communicate appropriate Project information back to key stakeholders within or relevant to their own organisation; and
    - (F) managing high level risks;
  - (ii) how the Parties will interact with the Governance Group; and
  - (iii) how the Governance Group will be supplied sufficient information by the Recipient for it to fulfil its functions.



### 3. Project Management and Governance:

- (a) **Project Manager:** The Recipient will appoint for the duration of the Project an appropriately trained, qualified, and experienced project manager, to manage and supervise the Project and completion of the Deliverables. The Project Manager will:
  - (i) have the authority (including appropriate financial delegations) to run the Project on a day to day basis on behalf of the Recipient within the constraints set out in this Deed and in accordance with the Work Programme and Annual Work Plans; and
  - (ii) ensure that the project management practices set out in the Work Programme and Annual Work Plans are followed.
- (b) **Project Executive:** The Recipient will appoint for the duration of the Project an appropriately trained, qualified, and experienced project executive who is authorised to represent the Recipient in communications under this Deed and to act for the Recipient under this Deed.
- (c) The Recipient may appoint an alternative or replacement Project Manager and/or Project Executive by written notice to the Ministry.
- (d) **Governance:** The Recipient shall establish for the duration of the Project a Governance Group of appropriately trained, qualified, and experienced personnel to provide overall guidance and direction to the Project. The Recipient shall ensure the relevant personnel, and their contact details, are specified in the Work Programme and Annual Work Plans. Each such personnel shall be considered a Key Person.
- (e) **Ministry representative:** The Ministry may appoint a Ministry representative to be present at meetings of the Governance Group. The Recipient shall ensure the Ministry representative is provided with reasonable prior notice of, and any relevant documentation in relation to, Governance Group meetings.

### 4. Project Reporting:

- (a) The Recipient will submit to the Ministry an annual report that relates to the previous Financial Year by 31 July of each year during the term of this Deed, or by such other later date to be agreed in writing by the Parties (each, an "**Annual Report**").
- (b) The Recipient will ensure each Annual Report:
  - (i) uses the template provided by the Ministry;
  - (ii) includes a comparison of the Project activities undertaken (including Deliverables and Project activities achieved and not achieved) for the applicable Financial Year against those set out in the applicable Annual Work Plan and the Work Programme;
  - (iii) In relation to funding and expenditure, sets out:
    - (A) the amount spent on the Project activities undertaken and a breakdown of the expenditure for the Financial Year tracked against the applicable Annual Work Plan and Work Programme budgets;
    - (B) the amount spent on the Project activities and a breakdown of the expenditure in aggregate for the period starting on the Commencement Date and ending the last day of the applicable Financial Year;
    - (C) confirmation and details of contributions made by the Recipient:
      - (I) for the Financial Year; and
      - (II) in aggregate for the period starting on the Commencement Date and ending the last day of the applicable Financial Year;
    - (D) the amount of Grant funding invoiced and received for the Financial Year, the activities to which Grant funding was applied;
    - (E) the total aggregate amount of Grant funding received as at the end of the applicable Financial Year;
    - and
    - (F) the amount and details of funding contributions from any other source:
      - (I) applied to the Project activities; and
      - (II) in aggregate of the period starting on the Commencement Date and ending the last day of the applicable Financial Year;



- (iv) includes an assessment of progress against the Work Programme and the applicable Annual Work Plan including monitoring data and progress against the Project objectives;
- (v) addresses any issues raised and provides any additional information requested by the Ministry;
- (vi) provides an update of health and safety in relation to the Project activities;
- (vii) provides the Change Control Register (in accordance with paragraph 2.7 of Schedule 6) and
- (viii) is prepared by the Recipient and submitted to the Ministry for approval at the cost of the Recipient.

#### **Quarterly Reports:**

- (c) The Recipient will submit a quarterly report to the Ministry for the three month periods ending 30 September, 31 December and 31 March by the end of the calendar month that follows of each year during the term of this Deed (each, a **"Quarterly Report"**).
- (d) The Recipient will ensure that each Quarterly Report:
  - (i) uses the form provided by the Ministry;
  - (ii) updates progress on the Project activities since the last Quarterly Report or Annual Report against the applicable Annual Work Plan and Work Programme;
  - (iii) provides an update on expenditure to date tracked against the Annual Work Plan budget;
  - (iv) raises any issues or risks that will require discussion or action;
  - (v) provides an update of health and safety in relation to the Project activities; and
  - (vi) details the amount of funding invoiced and received from all funding sources for the relevant three month period and the Project activities to which the Grant Funding was applied.

#### **Audit Reports:**

- (e) The Recipient will submit an audit report to the Ministry for every Financial Year during the term of this Deed by 31 October in respect of the Grant funding received by the Recipient for the previous Financial Year of each year during the term of this Deed (each, an **"Audit Report"**).
- (f) Each Audit Report must be prepared by an auditor (independent from the Recipient and the Recipient's related entities) who is a chartered accountant and the scope of the audit must include:
  - (i) compliance with the terms and schedules of this Deed;
  - (ii) appropriate use of the Grant funding and Project funding from other sources; and
  - (iii) any other matters raised by the Ministry in relation to the proposed audit.
- (g) In the event that an audit reveals any misappropriation of the Grant funding or material discrepancies, the Recipient will be liable for the repayment of any misappropriated Grant funding monies.
- (h) The Recipient may claim reasonable and actual costs up to the annual amount stated in the Work Programme it incurs from compliance with these audit report requirements as Project Costs.

#### **5. Approval of Reports**

- (a) Any report under special term 4 must be approved by the Governance Group before being submitted to the Ministry.
- (b) The Ministry will consider any report submitted to it under special term 4 and notify the Recipient in writing within four weeks of receipt whether the Ministry:
  - (i) accepts the report, or
  - (ii) requests reasonable modifications to the report, or
  - (iii) rejects the report on reasonable grounds.
- (c) Where the Ministry requests reasonable modifications to the report, the Recipient will promptly (and within 20 Working Days) update the report accordingly and resubmit to the Ministry for its subsequent review in accordance with special term 5(a).

- (d) Where the Ministry rejects the report on reasonable grounds, either Party may request a meeting with the other Party's appointed representative to discuss matters related to the report.

**6. Annual Work Plans**

- (a) The Recipient shall prepare an Annual Work Plan for the Project for each Financial Year in accordance with the following provisions.
- (b) Where the Annual Work Plan for the Project in a particular Financial Year is not agreed and incorporated into the Deed at the Commencement Date, the Recipient will submit a draft Annual Work Plan to the Ministry:
  - (i) for the initial Annual Work Plan by the date required by the Ministry; and
  - (ii) for any subsequent Financial Year by 30 April of the preceding Financial Year.
- (c) The Recipient will ensure that each draft Annual Work Plan:
  - (i) uses the form provided by the Ministry;
  - (ii) details the budget and funding sources for all Project activities;
  - (iii) details the amount of funding required from all sources;
  - (iv) details the Project activities and associated Deliverables;
  - (v) details any statutory permissions or consents required to undertake any of the proposed Project activities;
  - (vi) details of any aspects that are materially different to the Work Programme; and
  - (vii) notes any health and safety issues and mitigations to be taken in relation to the Project activities.

**7. Approval of Annual Work Plans**

- (a) Subject to special term 7(b) Annual Work Plans must be approved by the Governance Group before being submitted to the Ministry for final approval.
- (b) Where the initial Annual Work Plan for the Project is not agreed and incorporated into the Deed at the Commencement Date, and the Governance Group has yet to be established in accordance with the Deed, the Annual Work Plan must be approved by the Recipient's authorised representative before being submitted to the Ministry for final approval.
- (c) The Ministry will consider any draft Annual Work Plan submitted to it under this special term 7 and notify the Recipient in writing within six weeks of receipt whether the Ministry:
  - (i) approves the draft Annual Work Plan, or
  - (ii) requests reasonable modifications to the draft Annual Work Plan.
- (d) The Ministry's approval of a draft Annual Work Plan will be confirmed by written notice to the Recipient. If the Ministry provides such approval, the Annual Work Plan will be deemed to be incorporated into and form part of the Work Programme and this Deed from the date of the notice of approval. For the avoidance of doubt, approval of a draft Annual Work Plan is not subject to the Change of Control Process in Schedule 6.
- (e) Where the Ministry requests reasonable modifications to the draft Annual Work Plan, the Recipient will promptly (and within 20 Working Days) update the draft Annual Work Plan accordingly and resubmit to the Ministry for its subsequent review in accordance with special term 7(a) or 7(b) as applicable.
- (f) The Recipient must not begin delivering Project activities and Deliverables for a particular Financial Year until the Ministry has notified its approval of the relevant Annual Work Plan in accordance with special term 7(d).
- (g) **Conflict:** In the event of any conflict or difference between an approved Annual Work Plan and the Work Programme, the Annual Work Plan shall take priority.

**8. Remedial Plan:**

- (a) If at any time:
  - (i) the Ministry considers that the Recipient has breached, or will imminently breach, any of its obligations under this Deed; or
  - (ii) the Recipient has given the Ministry notice of a breach or likely breach of any of its obligations under this Deed,



(in each case a "**Delivery Issue**"), the Ministry may give notice to the Recipient setting out the Delivery Issue ("**Delivery Notice**").

- (b) As soon as possible after receipt of a Delivery Notice (and in any event within three Working Days of receipt) the Recipient will consult with the main contact of the Ministry as set out in Part A of this Deed or otherwise notified by the Ministry in writing.
  - (c) As soon as possible after receipt of a Delivery Notice (and in any event within 10 Working Days of receipt) the Recipient will prepare and provide to the Ministry a proposed plan setting out ("**Remedial Plan**"):
    - (i) full details of the Delivery Issue (including its causes, expected duration and impact on the Project and the Recipient's obligations under this Deed);
    - (ii) a plan (including Milestones) setting out the steps it will take to eliminate, and mitigate the effect of, the Delivery Issue and prevent the Delivery Issue from recurring, as applicable; and
    - (iii) success criteria to determine whether the Delivery Issue has been rectified ("**Success Criteria**").
  - (d) The Recipient will promptly (and, in any event, within five Working Days of a request by the Ministry) make such amendments to the proposed Remedial Plan as the Ministry may reasonably require and deliver the amended Remedial Plan to the Ministry for review.
  - (e) The Ministry will review the amended Remedial Plan and will promptly at its sole discretion (and, in any event, within five Working Days of receipt) either:
    - (i) approve the Remedial Plan by written notice to the Recipient;
    - (ii) notify the Recipient of any further required amendments, to be made in accordance with special term 8(d); or
    - (iii) issue to the Recipient a further notice which specifies that the relevant Delivery Issue has not been remedied.
  - (f) If the Ministry has approved the Remedial Plan in accordance with special term 8(e)(i), the Recipient will implement the Remedial Plan in accordance with its terms and this Deed.
  - (g) The Ministry agrees to follow the process set out in this special term 8(a)-(e):
    - (i) if the Ministry exercises its rights under clause 5.5(a) to withhold or suspend the Grant;
    - (ii) before exercising its rights under clause 5.5(a) to reduce or require repayment of the Grant; or
    - (iii) before exercising, in relation to clause 5.6(a), 5.6(b) or 5.6(h), its rights under clause 5.6(i) to suspend or terminate this Deed, unless the Ministry at its sole discretion considers the circumstances are a material breach of the Deed that is not capable of remedy.
- For the avoidance of doubt, the fact that the Ministry follows the process in this special term 8(a)-(e) does not prevent it from subsequently exercising the rights referred to in (ii) and (iii) above, including where special term 8(e)(iii) applies or where the Recipient does not comply with special term 8(f).
- (h) The exercise, or deferral, by the Ministry of its rights in this special term 8 will be without prejudice to any other rights of remedies of the Ministry under this Deed or otherwise.

#### 9. **Requests for Payment:**

- (a) The Recipient will submit a request for payment of the Grant as follows:
  - (i) For Financial Year 1, for \$3,000,000.00 of the Grant in respect of the Recipient's successful completion of all of the activities and Deliverables for Year 1 as detailed in the Annual Work Plan;
  - (ii) For Financial Year 2, for \$3,000,000.00 of the Grant in respect of the Recipient's successful completion of all of the activities and Deliverables for Year 2 as detailed in the Annual Work Plan; and
  - (iii) For Financial Year 3, for \$1,000,000.00 of the Grant in respect of the Recipient's successful completion of all of the activities and Deliverables for Year 3 as detailed in the Annual Work Plan and the Ministry's representative visiting the site to verify the Project's completion (in accordance with clause 4.10 (Allow Access)).
- (b) Each request for payment must include:



- (i) a completed Payment Request; and
- (ii) a correct tax invoice for the Grant for the relevant amount stated at 9(a) above. The invoice must quote this Deed's deed number.
- (c) For the avoidance of doubt:
  - (i) payment of any Grant monies is subject to the Recipient's successful completion of all of the activities and Deliverables for the relevant Financial Year; and
  - (ii) further to sections 1.2(a) and 1.3(a) of Schedule 5 (Multi-Year Projects), payment of any Grant monies in subsequent Financial Years will be withheld until the Ministry has approved (in accordance with special term 5) the Recipient's Annual Report submitted for the preceding Financial Year.
- (d) For the final Financial Year, 10% of that year's total Fund contribution or an alternate sum of funding agreed with the Ministry (**Retention**) will be withheld until the Ministry receives and approves the Annual Report for that Financial Year (in accordance with special term 5) and the Project Closure Report in accordance with clause 4.9 of the Deed. The Retention will be stated in the Ministry approved Annual Work Plan for that Financial Year. The Recipient must claim the Retention in the last request for payment which must be submitted with the Project Closure Report.

## PART C: GENERAL TERMS

### Section 1: Definitions and Interpretation

**1.1 Definitions:** In this Deed, unless the context requires otherwise, the following definitions shall apply:

**"Annual Work Plan"** means the annual plan prepared by the Recipient (and approved in accordance with this Deed), detailing work programmes, budgets and funding sources, Project activities and Deliverables for a particular Financial Year (or part thereof) of the Project;

**"Capital Assets"** means those assets used in the production of goods or the rendering of services by the Recipient that are acquired, enhanced or brought to working order, by the Recipient using an amount of the Grant;

**"Capital Costs"** means costs incurred by the Recipient in acquiring an asset, enhancing an asset or in bringing an asset to working order or to a state in which it can produce the goods or render the services as required for the Project;

**"Clawback Amount"** means an amount calculated as follows:

$$\text{Clawback Amount} = G - (G \times (x/y)),$$

Where, for the relevant Capital Asset:

G = that amount of the Grant applied to Capital Costs

x = the number of whole calendar months since the first payment of that part of the Grant applied to Capital Costs

y = the number of months of the restriction period set out in Schedule 4;

**"Commencement Date"** means the date specified in Part A of this Deed;

**"Deed"** means the legal agreement between the Ministry and the Recipient that comprises Parts A-C of this deed, and any and all Schedules, Annexures, Work Programme and Annual Work Plans attached or incorporated by reference;

**"Deliverable"** means any deliverable the Recipient shall complete as part of the Project as set out in the relevant Annual Work Plan for each Financial Year;

**"Expiry Date"** means the date specified in Part A of this Deed;

**"Financial Year"** means any 12 calendar month period, or part period thereof, commencing on 1 July;

**"Force Majeure Event"** means:

- (a) fire, explosion, lightning, storm, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquakes, riot and civil commotion;
- (b) failure by any utility company or other like body to carry out works or provide services;

- (c) any failure or shortage of fuel or transport;
- (d) war, civil war, armed conflict or terrorism;
- (e) any official or unofficial strike, lockout or other labour dispute;
- (f) governmental action; or
- (g) such other substantially similar circumstances which prevents either or both Parties from performing its obligations under this Deed;

**"Fund"** means the Freshwater Improvement Fund as administered by the Ministry;

**"Governance Group"** means the governance group (if any) established under Terms of Reference to oversee the governance and direction of the Project;

**"Grant"** means the sum of funding provided by the Ministry from the Fund pursuant to this Deed;

**"Insolvency Event"** means:

- (a) the Recipient is unable or is deemed to be unable to pay its debts when they fall due;
- (b) a receiver, liquidator or other encumbrancer is appointed to the Recipient or to any part of its assets or undertakings;
- (c) a compromise or arrangement is proposed or made between the Recipient and its creditors or any class of them;
- (d) any indebtedness of the Recipient is not paid when due or shall become due and payable or steps are taken to enforce any charge, mortgage or Security Interest for such indebtedness; and/or
- (e) any present or future charge, mortgage or Security Interest over or in respect of any of the assets of the Recipient becomes enforceable or is enforced;

**"Intellectual Property"** means all manner of intellectual property rights including (without limitation) patents, trademarks and service marks, logos, copyright, design rights and know-how whether registrable or not in any country;

**"Land Title"** means title to an estate or interest in land (including freehold and leasehold title) registered in accordance with the Land Transfer Act 1952 and includes, where appropriate, a computer register within the meaning of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002;

**"Minister"** means the Minister for the Environment;

**"Parties"** means the Ministry and the Recipient;

**"Payment Request"** means the Recipient's request for payment of a sum of Grant monies in the template provided by the Ministry;

**"Project"** means the project to be completed by the Recipient in accordance with the Work Programme and Annual Work Plans;

**"Project Closure Report"** means the project closure report prepared by the Recipient in accordance with clause 4.9;

**"Project Costs"** means those costs that are reasonable and either;

- (f) directly attributable to the Deliverables; or
- (a) if they cannot be directly attributed to the Deliverables, can be allocated to the Project in accordance with a standard cost allocation system and cost drivers,

measured in standard accrual accounting terms and excluding:

- (b) any mark up or profit margin by the Recipient (or a Sub-Recipient); and
- (c) any costs based on theoretical or perceived market rates;

**"Project Executive"** means the project executive appointed by the Recipient in accordance with special term 3 in Part B of this Deed;

**"Project Manager"** means the project manager appointed by the Recipient in accordance with special term 3 in Part B of this Deed;

**"Restriction Period"** means in respect of each Capital Asset, a period of 60 months from the date of first payment of any portion of the Grant applied to relevant Capital Costs;

**"Security Interest"** has the meaning given to that term in the Personal Property Securities Act 1999;



**"Sub-Recipient"** means any person or body which the Recipient funds in whole or in part from the Grant whether as a supplier, contractor or otherwise and whether by payment or grant;

**"Terms of Reference"** means the terms of reference establishing, and describing the functions, make-up and procedure of, any Governance Group and/or Project Board;

**"Work Programme"** means the work programme prepared by the Recipient covering the life of the Project and attached at Annexure 1 to this Deed; and

**"Working Day"** means any day on which banks are generally open for business in Wellington (other than Saturdays, Sundays or public holidays).

**1.2 Interpretation:** In the interpretation of this Deed, unless otherwise stated:

- (a) no executive or prerogative power or right, or any immunity, of the Crown is affected by this Deed;
- (b) "including" and similar words do not imply any limitation;
- (c) reference to the singular includes the plural and vice versa and references to any gender includes both genders;
- (d) headings are included for ease of reference only and shall not affect the interpretation of this Deed;
- (e) references to clauses and schedules are references to clauses of and schedules to this Deed;
- (f) amounts are in NZ\$ and exclude GST (if any);
- (g) if the Recipient comprises more than one person, each of those person's liability to the Ministry is joint and several;
- (h) references to a party or a person includes any form of entity and their respective successors, assigns and representatives; and
- (i) any statutory reference includes any statutory extension, amendment, consolidation or re-enactment and any statutory instrument, order or regulation made under any statute for the time being in force.

**1.3 Precedence:** In the event of a conflict between:

- (a) the terms of Part B and Part C of this Deed, Part B (Special Terms) shall take precedence;
- (b) Parts A-C of this Deed, and any other Schedule or attachment (including the Work Programme and Annual Work Plans), Parts A-C of this Deed shall take precedence; and

except to the extent the parties expressly agree in writing otherwise with reference to this clause 1.3.

## Section 2: The Grant

**2.1 Grant amount:** The Ministry approves the Grant for the Project of the lesser of:

- (a) \$7,000,000.00; or
- (b) the maximum percentage of the actual total cost of the Project, assessed over the duration of the Project, approved by the Ministry and specified in the Work Programme(if any); or
- (c) An amount equal to the difference between the actual total cost of the Project and the total value (assessed by the Ministry) of any type of contribution to the Project by the Recipient and/or from any other source.

**2.2 Maximum:** Under no circumstances shall the Grant funding payable to the Recipient exceed the amount specified in 2.1(a).

**2.3 Multi-year Projects:** If the Project spans or shall span over multiple Financial Years, the terms in Schedule 5 (Multiyear Projects) shall apply.

**2.4 Capital Assets:** The terms in Schedule 4 (Capital Assets) shall apply to Capital Assets (if any).

**2.5 Full funding obtained:** The Recipient warrants and represents that it has obtained full funding for the Project and in any event will not require any further funding from the Ministry in order to complete the Project.

**2.6 Use of Grant:** The Recipient must only use the Grant for proper purposes and within the scope of the Project. The Ministry may recover any Grant monies which are misappropriated or not spent in accordance with this Deed. In particular, the Recipient shall:



- (a) ensure that the Grant is only used for costs that are Project Costs and, to the extent the costs allocated to the Project also relate to other purposes of the Recipient, are allocated in a proportional manner;
  - (b) ensure that expenses incurred in carrying out the Project are reasonable and in accordance with Schedule 1 (Expense Policy);
  - (c) not use any part of the Grant for Capital Costs, except with the prior written agreement of the Ministry;
  - (d) account for the Grant received under this Deed in accordance with generally accepted accounting practices, with appropriate internal controls to ensure that the Grant is applied for the purposes of this Deed;
  - (e) establish, and maintain for the period of the Project, cost codes that relate specifically to all costs incurred for the purposes of this Project so that the Project Costs can be categorised and reported by their nature;
  - (f) comply with any cost policies provided by the Ministry from time to time in relation to the accounting treatment of Project Costs and use of the Grant;
  - (g) ensure that the Grant is used to fund the Project Costs of a Sub-Recipient or subcontractor specified in the Annual Work Plans, when those costs are properly due and payable;
  - (h) follow appropriate procurement processes when buying goods or services for the Project so that only reasonable, open market costs are incurred on an arm's length basis avoiding any conflict of interest. If a conflict of interest is unavoidable the conflict must be declared to the Ministry and managed appropriately by the Recipient;
  - (i) not claim for costs or expenses that have been, or will be, claimed from other sources, except as expressly provided for in this Deed; and
  - (j) not claim or use any part of the Grant to support or assist activities which are political (e.g. supporting a political party or movement, running a political campaign, or lobbying against the Government).
- 2.7 **Eligibility:** Without prejudice to any other rights to which the Ministry may be entitled, the Recipient accepts that eligibility for payment of the Grant may, at the Ministry's sole discretion, be lost if:
- (a) claims for payment and related information are not given to the Ministry by thirty calendar days following the due date of the final Deliverable; or
  - (b) the Project is not completed by the Expiry Date; or
  - (c) the Project is not completed by and claims for payment (and any required supporting documentation) are not given to the Ministry by the end of the Financial Year in which the Expiry Date falls.
- 2.8 **Public statements:** The Recipient shall ensure no public statement is made by or on behalf of the Recipient (or any Sub-Recipient) relating to the commencement of this Deed, the Grant or the Project before such a statement is made by the Ministry or Minister.
- 2.9 **No Retrospective Costs:** The Ministry will not be liable for any costs or liabilities incurred by the Recipient in relation to the delivery of the Project prior to the Commencement Date.

### Section 3: General Terms and Conditions

- 3.1 **Entire Agreement:** This Deed (including the Work Programme, Annual Work Plans and attachments) contains everything the Parties have agreed on in relation to the Grant. In the event of any conflict, the terms of Parts A-C of this Deed shall prevail. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, save as permitted by law.
- 3.2 **Changes:** Any variation to this Deed (including the Work Programme and Annual Work Plans) must be in accordance with Schedule 6 (Change Control Process).
- 3.3 **Severability:** If any term of this Deed becomes or is declared by any court to be invalid or unenforceable in any way:
- (a) such invalidity or unenforceability shall in no way impair or affect the remainder of the Deed which will remain in full force and effect; and
  - (b) the invalid or unenforceable term will be replaced with a provision which as far as possible accomplishes the original purpose of the term.

- 3.4 **Waiver:** Any delay or failure by either Party at any time to exercise (in whole or in part) any right or remedy under this Deed shall not be construed as a waiver of any such right or remedy and shall not affect the validity of the Deed (in whole or in part). No waiver shall be effective unless it is expressly stated in writing to be a waiver and communicated to the other Party in writing. Any waiver will not constitute a waiver of any subsequent exercise of the same right or remedy in the future.
- 3.5 **Governing Law and Jurisdiction:** This Deed is governed by the law of New Zealand and the Parties submit to the exclusive jurisdiction of New Zealand's courts.
- 3.6 **Dispute Resolution Procedure:**
- (a) If any dispute arises out of or in connection with this Deed, the main contact persons of each Party shall use all reasonable endeavours to resolve it as promptly as possible within 15 Working Days of a Party notifying the other Party of the dispute ("Date of Notification"). Subject to such persons having met at least twice, either Party may at any time formally refer such dispute to their respective Chief Executives (or equivalent) for resolution within 10 Working Days of the date of referral.
  - (b) If a dispute is not settled in accordance with clause 3.6(a), either Party may refer the dispute to:
    - (i) mediation or some other form of alternative dispute resolution ("Mediation") conducted in New Zealand and governed by New Zealand law; or
    - (ii) the jurisdiction of the New Zealand courts.
  - (c) If the Parties do not agree within 5 Working Days of reference of the dispute to Mediation (or such other period as agreed by the Parties in writing):
    - (i) the resolution of the dispute;
    - (ii) the mediation procedures to be adopted;
    - (iii) the timetable for all steps in those procedures; and
    - (iv) the selection and compensation of the independent person required for the Mediation,
 then the Parties shall mediate the dispute per the mediation rules of the Resolution Institute and the Chair of the Resolution Institute (or his or her nominee) shall select the mediator and determine the mediator's remuneration. The Parties shall make all reasonable efforts to resolve the dispute by Mediation within 3 months (or such other period as agreed by the Parties in writing) from the Date of Notification. If the dispute is not resolved by Mediation within such period, the Parties may seek any other remedies available to them.
  - (d) Nothing contained in this clause 3.6 shall prevent either Party, in an emergency, seeking any interim or interlocutory relief from the court.
  - (e) Except in respect of Mediation (the costs of which shall be paid as set out above), each Party shall pay their own costs for resolving any dispute.
- 3.7 **Intellectual Property Rights:**
- (a) **Pre-existing Intellectual Property:** Intellectual Property owned by a Party or its licensors prior to the commencement of this Deed and Intellectual Property developed by a Party independently from this Deed, remains the property of that Party or its licensors as the case may be.
  - (b) **New Intellectual Property:** Subject to clause 3.7(a) and the Recipient complying with the terms of this Deed, any Intellectual Property created or developed in the course of the Project shall become the property of the Recipient or its licensors.
  - (c) **Recipient Intellectual Property:** The Recipient grants to the Ministry a non-exclusive, sublicensable, royalty free, perpetual and irrevocable licence to use, modify, develop, sublicense and disseminate for any purpose all Intellectual Property owned by the Recipient or its licensors that forms part of the Deliverables.
  - (d) The Recipient warrants and represents that it is legally entitled to grant the licence stated in clause 3.7(c).
- 3.8 **Third Party Rights:** Unless expressly stated no part of this Deed shall create rights in favour of any third party pursuant to Subpart 1 of Part 2 of the Contract and Commercial Law Act 2017 (contractual privity).
- 3.9 **Term:** This Deed shall commence on the Commencement Date and shall, subject to either party's rights of termination under this Deed, continue in force until the Recipient has completed the Deliverables to the reasonable satisfaction of the Ministry.



- 3.10 **Consequences of Expiry / Termination:** Termination of this Deed shall be without prejudice to any rights or liabilities accrued at the date of termination, provided that the Ministry shall cease to have any obligation to pay the Grant to the Recipient (which may, at the Ministry's sole discretion, include payment of any overdue or outstanding invoices).
- 3.11 **Notices:** Any notice given under or pursuant to this Deed shall be in writing and signed by an authorised person and may be delivered personally by hand, post or email to the other party at the address stated in this Deed. Notices shall be deemed delivered as follows:
- (a) if delivered personally by hand, at the time of delivery;
  - (b) if posted, on the third Working Day after posting;
  - (c) if emailed, on the day of successful transmission as confirmed by the email system; and
  - (d) if delivered after 5pm, at 9am the next Working Day.
- 3.12 **Counterparts:** This Deed may be executed by the Parties in two or more counterparts (including emailed copies), each of which shall be deemed an original but when taken together will constitute a binding and enforceable agreement between the Parties.
- 3.13 **Force Majeure:** A Party ("the affected party") shall not be liable to the other Party for any delay or failure to perform any of their obligations under this Deed if such delay or failure results from a Force Majeure Event, provided that where a Party seeks to rely upon this clause:
- (a) As soon as the affected party becomes aware of the Force Majeure Event, it shall immediately notify the other Party and confirm the estimated period that the delay or failure shall continue.
  - (b) The affected party shall use its best endeavours to continue to perform its obligations under this Deed and minimise the effect of the event for the duration of any Force Majeure Event.
  - (c) If any Force Majeure Event prevents the affected party from performing all of its obligations under the Deed for a period in excess of 30 calendar days, either Party may terminate the Deed by notice in writing with immediate effect.
- The affected party will not be entitled to relief under this clause in any circumstances to the extent it has directly or indirectly caused or substantially contributed to any delay or failure in the performance of its obligations.
- 3.14 **Survival:** The following clauses shall remain in full force and effect after expiry or termination: special term 8 (Restrictions on sale), clauses 2.9 (No Retrospective Costs), 3.5 (Governing Law and Jurisdiction), 3.6 (Dispute Resolution Procedure), 3.7 (Intellectual Property Rights), 3.11 (Notices), 4.5 (Endorsement), 4.6 (Publications), 4.7 (Project Information), 4.10 (Allow Access), 4.11 (Confidentiality), 4.12 (Recordkeeping), 4.13 (Official Information Requests), 4.14 (Reputations), 4.15 (Third Party Intellectual Property Rights), 4.19 (Insurance), 4.23 (Default Interest), 4.24 (Indemnity), 5.3 (Project Review), 5.4 (Ministry Publicity and Confidentiality), 5.5 (Recovery of Grant), 5.8 (Ministry Not Liable), Schedule 2 (Publications), Schedule 3 (Audit), Schedule 4 (Capital Assets), Schedule 5 (Multiyear Project), Schedule 6 (Change Control Process), this clause and any other clauses of this Deed which by their nature are intended to survive expiry or termination of this Deed.

#### Section 4: Recipient's Rights and Obligations

- 4.1 **Project Delivery:** The Recipient must carry out the Project and complete the Deliverables in accordance with the Work Programme and Annual Work Plans, the terms and conditions of the Deed and to the Ministry's reasonable satisfaction. In particular the Recipient shall:
- (a) promptly and efficiently carry out the Project with due skill, care and diligence in accordance with generally accepted standards of the Recipient's profession(s) or industry;
  - (b) achieve successful, timely completion of the Project activities and Deliverables on or before their due date;
  - (c) give the Project appropriate priority over other activities and not divert resources away from the Project which may cause delays in its completion;
  - (d) efficiently and economically source and provide everything the Recipient needs to undertake the Project at the Recipient's risk and cost;
  - (e) comply with all New Zealand, and each relevant jurisdiction's, laws, codes and standards and all applicable international conventions;
  - (f) without limiting the generality of clause 4.1(e), comply at all times with the requirements and provisions of the Hazardous Substances and New Organisms Act 1996 (HSNO Act), Resource



Management Act 1991 (RMA) and the Health and Safety at Work Act 2015 (HSWA) (and any amendments or replacements to those Acts) and any related regulations, codes of practice and industry best practice guidelines;

- (g) obtain every necessary and prudent authorisation in order to carry out the Project before any actions requiring the authorisations are commenced and comply with such consent or authorisation; and
- (h) maintain an appropriate governance structure, including compliance with any relevant legislative requirements.

**4.2 Personnel:** The Recipient shall:

- (a) carry out the Project only using appropriately trained, qualified, experienced and supervised personnel;
- (b) ensure that all of its employees and personnel (including Sub-Recipients and sub-contractors) are trained in the relevant health and safety requirements applicable to the Project (confirmation of relevant training is to be provided to the Ministry if requested);
- (c) ensure that all of its employees and personnel and any other parties associated with the Project, including Sub-Recipients, sub-contractors, service providers, the public, and any visitors, undergo appropriate safety briefings and health and safety inductions;
- (d) ensure that all of its employees and personnel (including Sub-Recipients and sub-contractors) are aware of potential liabilities and obligations under the environmental laws and regulations relevant to the Project;
- (e) end the involvement with the delivery of the Project of any of the Recipient's personnel to the extent reasonably requested by the Ministry; and
- (f) ensure that any specified key personnel carry out the Project.

**4.3 Keep the Ministry Informed:** The Recipient shall keep the Ministry properly informed in writing (and in electronic form if requested) about:

- (a) progress any important issues in relation to the Project including notifying the Ministry immediately if it becomes aware of any issues that may affect delivery of the Project in accordance with the Work Programme or an Annual Work Plan that may require any material changes to be made in relation to the Project, or that might give rise to liability or enforcement action under any laws and obligations;
- (b) any enforcement action commenced against the Recipient under the HSNO Act, RMA or HSWA, or any other laws, regulations, codes, standards or applicable International Convention, in any capacity; and
- (c) material health and safety information in relation to the Project including, but not limited to:
  - (i) reports of occurrences of safety incidents, details of damaged property, unsafe or hazardous acts or conditions (as soon as practicable);
  - (ii) details of non-compliances or any details of any new hazards or significant amendments to the Recipient's safety management plan; and
  - (iii) evidence if requested, that regular health and safety meetings are held and that scheduled audits have been completed. (The Recipient agrees that a representative of the Ministry may be present at such meetings or audits or inspections from time to time.)

**4.4 Reports and meetings:** The Recipient shall provide the Ministry with reports, and attend meetings, as required by the Ministry from time to time.

**4.5 Endorsement:** The Recipient acknowledges and agrees that the Minister does not necessarily endorse the Project and accordingly the Recipient shall not represent that the Minister endorses the Project. However, the Recipient will appropriately acknowledge the Grant in all publications and publicity about the Project, and the form and content of such acknowledgement shall comply with Schedule 2 (Publications) and/or with any requirements that the Ministry may specify.

**4.6 Publications:** The Recipient shall comply with the requirements detailed in Schedule 2 (Publications) in respect of any publication (in any form) arising from this Deed or the Grant.

**4.7 Project Information:** Subject to the provisions of the Official Information Act 1982 and the Local Government Official Information and Meetings Act 1987 the Recipient shall make information about the Project (particularly outcomes) freely available to any person who wishes to use it for any non-profit purpose. In each publication (in any form) which results from the Project, the Recipient shall comply with the copyright statement requirements in Schedule 2 (Publications) and shall state that the use and copying of the information for non-profit purposes is welcomed and allowed.



- 4.8 **Post-Project review:** The Recipient agrees that following the expiry or termination of this Deed, it shall provide access to its personnel and make information available as reasonably required by the Ministry for the purposes of reviewing the Project and/or the Fund.
- 4.9 **Project Closure Report:** At the completion of the Project the Recipient will prepare a Project Closure Report and submit it to the Ministry no later than three months after the Expiry Date. The Project Closure Report:
- (a) shall cover the Term of the Project;
  - (b) must include an assessment of the extent to which the Project objectives (agreed in the Work Programme) have been achieved;
  - (c) a comparison of the Project activities undertaken during the Term against those set out in each of the Annual Work Plans;
  - (d) Identification of any lessons learned through the delivery of the Project;
  - (e) must include, in relation to expenditure:
    - (i) the budget for the Project activities set out in the Work Programme and the Annual Work Plans, the actual amount spent and variance for the Term;
    - (ii) a reasonable breakdown of expenditure;
    - (iii) confirmation and details of contributions made by the Recipient;
    - (iv) the amount of funding received from the Ministry under this Deed and the Sub-Recipient Project activities to which it was applied; and
    - (v) the amount and details of contributions from any other funding source (including those of any Sub-Recipient and any other Project partner) to the Project activities set out in the Work Programme and Annual Work Plans;
  - (f) address any issues raised and include any additional information requested by the Ministry; and
  - (g) must be prepared by the Recipient and approved by the Ministry at the cost of the Recipient.
- 4.10 **Allow Access:** The Recipient agrees that upon the Ministry's request it shall provide, at all reasonable times and upon reasonable notice, access to their premises, personnel and records (physical files and electronic) for the purpose of audit and verification of work undertaken, use of the Grant and other reasonable purposes in connection with this Deed in accordance with clause 5.3 and Schedule 3 (Audit). The Recipient shall ensure that the Ministry has the same rights of access in respect of any Sub-Recipient.
- 4.11 **Confidentiality:** The Recipient must keep confidential and secure all information disclosed by the Ministry in connection with the negotiation or performance of this Deed, including the terms of this Deed (collectively "Confidential Information"). The Recipient must not disclose any Confidential Information except:
- (h) with the Ministry's prior written consent;
  - (i) as necessary to fulfil the Recipient's obligations in this Deed;
  - (j) to the extent the Confidential Information is in the public domain (other than through a breach by the Recipient of its obligations in this clause); or
  - (k) as otherwise required by law.
- 4.12 **Recordkeeping:** The Recipient shall keep accounts (to Generally Accepted Accounting Practice standards) and other records, and have a system acceptable to the Ministry, which enables prompt and accurate verification of any matter in relation to the Project, particularly about how the Grant has been or will be used, and what expenditure by item has been incurred. Records must be retained and available for review, audit, copying and use by the Ministry's representatives at any time during, and for at least 7 years after the Expiry Date.
- 4.13 **Official Information Requests:** The Recipient shall immediately inform the Ministry of any request received by it for information under the Official Information Act 1982 (OIA) or the Local Government Official Information and Meetings Act 1987 (LGOIMA). The Recipient shall immediately transfer to the Ministry any request received by it for information under the Official Information Act 1982 (OIA) in relation to this Deed and shall advise the person requesting the information of such transfer. The Recipient shall immediately transfer to the Ministry any request it receives for information under the LGOIMA in relation to this Deed and shall advise the person requesting the information of such transfer if the information to which the request relates is more closely connected with the functions of the Ministry than the functions of the Recipient. The Ministry and the Minister may be required to disclose information that either hold in accordance with the OIA. One category of information that may not be required to be disclosed is



commercially sensitive information. To assist the Ministry to assess information it holds for the purposes of the OIA, the Recipient shall mark clearly all commercially sensitive information as commercially sensitive when the Recipient provides that information to the Ministry. The Ministry will use reasonable endeavours to advise the Recipient of any request received by it under the OIA that relates to the Recipient's commercially sensitive information. The Recipient may also be required to disclose information that it holds in accordance with the LGOIMA.

- 4.14 **Reputations:** The Recipient shall not knowingly or recklessly, do permit or omit, to do anything that may attract adverse publicity or damage the reputation of the Fund, the Minister, the Ministry or the New Zealand Government.

- 4.15 **Third Party Intellectual Property Rights:** The Recipient:

- (a) warrants that it has a legal entitlement to use the Intellectual Property provided as part of the Deliverables and that providing the Deliverables does not infringe the Intellectual Property of any third party; and
- (b) indemnifies the Ministry against any claim arising from the Recipient's infringement or alleged infringement of any third party's Intellectual Property or the Ministry's claim of Intellectual Property developed under or in connection with this Deed.

- 4.16 **Representations and Warranties:** The Recipient represents and warrants to the Ministry that:

- (a) it has full power and authority to enter into and perform this Deed and this Deed has been executed by a duly authorised representative of the Recipient;
- (b) all information, documents and accounts of the Recipient submitted to the Ministry for its appraisal of the Project for the purposes of this Deed are true and accurate and no change has occurred since the date on which such information was supplied which renders the same untrue or misleading in any respect and that there has been no material adverse change in the business, assets, operations or prospects of the Recipient since such information was provided; and
- (c) the Recipient has disclosed to the Ministry all information which would or might reasonably be thought to influence the Ministry in awarding the Grant to the Recipient or the amount thereof.

- 4.17 **Assignment:**

- (a) The Recipient's rights to the Grant pursuant to this Deed are exclusive to the Recipient and the Recipient must not assign or otherwise transfer any benefit or burden of this Deed. Any transfer of shares, or any other arrangement affecting the Recipient which results in a change in the effective control of the Recipient, through whatever means, will be deemed to be an assignment of this Deed, requiring the prior approval in writing of the Ministry. No assignment releases or discharges the assignor from any obligation under this Deed.
- (b) The assignment by the Recipient of any of its rights or obligations under this Deed in whole or in part will not relieve the Recipient in any form whatsoever from its responsibility for due performance of this Deed in accordance with its terms.

- 4.18 **Subcontracting:** The Recipient may sub-contract any of its obligations or make any sub-grant under this Deed subject to the following conditions:

- (a) Even if aspects of the Project are sub-contracted the Recipient continues to be responsible for delivery of the Project and performance of this Deed and will remain wholly responsible for the work, acts and/or omissions of all Sub-Recipients;
- (b) The Recipient is responsible for ensuring the suitability of any Sub-Recipient and the Sub-Recipient's capability and capacity to deliver the aspect of the Project being sub-contracted;
- (c) The Recipient must ensure each Sub-Recipient is fully aware of the Recipient's obligations under the Deed and any sub-contract or sub-grant arrangement it enters into is on terms consistent with this Deed;
- (d) The Recipient shall be responsible for any fees or expenses claimable by the Sub-Recipients and for any costs incurred by the Recipient in employing the Sub-Recipients;
- (e) The Recipient must inform the Ministry of the involvement of any Sub-Recipients and disclose in writing to the Ministry all material interests (including all direct or indirect financial interests) in any Sub-Recipient; and
- (f) The Recipient must promptly end the involvement of any Sub-Recipient (or any of their personnel) or any sub-grant as may be reasonably requested by the Ministry.



**4.19 Relationship and Authority:**

- (a) Nothing in this Deed shall constitute a partnership (being a relationship between persons carrying on a business in common with a view to profit), joint venture, principal/agent or employer/employee relationship between the Parties for any purposes. The relationship between the Parties is a relationship only for the supply of funding on the terms set out in this Deed.
- (b) The Recipient does not have the Ministry's (or the Minister's) authority to say or do anything on behalf of the Ministry (or the Minister).

**4.20 Insurance:**

- (a) The Recipient must, at the Recipient's cost, have and maintain appropriate insurance cover with a reputable insurance company to cover its liabilities arising out of the Project for the term, and for a period of 24 months following the termination or expiry, of this Deed. The Recipient shall provide the Ministry with evidence to the Ministry's reasonable satisfaction of such cover upon demand.
- (b) If the Ministry suffers any loss or damage as a result of any act or omission of the Recipient its employees, agents or contractors, the Recipient shall fully indemnify the Ministry.

**4.21 Health and safety systems:** At all times the Recipient will have in place, implement and operate safety management systems which comply with the HSWA (and any amendments or its replacements) and any applicable regulations, codes of practice and industry best practice guidelines. The Recipient is required to ensure that all safe work procedures and practices developed for the Project meet all statutory and regulatory requirements.

**4.22 Financing Statements:** The Recipient agrees to not register a financing statement against the Ministry, the Minister or the New Zealand Government on the Personal Property Securities Register in respect of the arrangements under this Deed.

**4.23 Default Interest:** If the Recipient fails to pay, when due, an amount payable by it under this Deed then, without prejudice to its other obligations, the Recipient will pay default interest on that overdue amount (including interest payable under this clause) calculated from its due date to the date of its receipt by the Ministry (after as well as before judgment) payable daily and to the extent not paid in any calendar month compounded on the first day of the next calendar month. This obligation to pay default interest will arise without the need for notice or demand. The rate of default interest in a calendar month will be 5 per cent per annum above the Ministry's cost of funds (expressed as an annual percentage rate) from whatever sources the Ministry may select, calculated on a daily basis.

**4.24 Indemnity:** The Recipient will, on demand, indemnify the Ministry against any cost, loss, expense or liability (including all reasonable legal expenses on a full indemnity basis) incurred by the Ministry as a result of or in connection with any amount payable by the Recipient to the Ministry not being paid when due.

**Section 5: Ministry's Rights and Obligations**

**5.1 Payment:** The Ministry shall pay the relevant portion of the Grant from the Fund in arrears to the Recipient upon receipt of a request for payment from the Recipient, subject to:

- (a) the Recipient's compliance with the terms of this Deed (including the Work Programme, Annual Work Plans and the special terms); and
- (b) the availability of funds, or reductions, in the Fund due to changes in the appropriation of funding for activities of the type covered by this Deed as a result of an Act of Parliament or the directives of the New Zealand Government.

**5.2 Invoice:** Payment of any Grant monies is not due until the Ministry has received from the Recipient a request for payment in accordance with special term 9, all supporting documentation required by the Ministry and the relevant Deliverables to which the tax invoice relates has been progressed to the Ministry's reasonable satisfaction. Sufficient evidence of the costs incurred by the Recipient in undertaking the Project, requested by the Ministry from time to time, shall be provided promptly upon the Ministry's request.

**5.3 Project Review:** The Ministry may, in accordance with clause 4.10 (Allow Access), observe and inspect anything at any time in relation to the Project and for the purposes of audit in accordance with Schedule 3 (Audit).

- 5.4 **Ministry Publicity and Confidentiality:** The Ministry may disclose (including via the Ministry's website on the Internet) any information in relation to the Project to anyone at any time. However, the Ministry shall not publicly disclose information that is deemed by the Ministry to be commercially sensitive except:
- (a) with the Recipient's prior written consent;
  - (b) as necessary to fulfil the Ministry's obligations in this Deed or to use the Deliverables;
  - (c) to the extent the information is in the public domain (other than through a breach by the Ministry of its obligations in this clause);
  - (d) as otherwise required by law, including the Ministry's obligations under the Official Information Act 1982, the Privacy Act 1993 and any other legislation or regulations relevant to its operations and nothing in this agreement applies to any disclosure required under any such legislation or regulations; or
  - (e) as required by a Select Committee or a Minister of the Crown, parliamentary convention or by procedures in relation to the appropriation of public money.
- 5.5 **Recovery of Grant:**
- (a) The Ministry may reduce, suspend, or withhold the Grant or require all or part of the Grant to be repaid, if:
    - (i) the Ministry judges the performance of the Project to be unsatisfactory;
    - (ii) the Recipient breaches clause 2.6 (Use of Grant) of this Deed or fails to comply with any other term or condition of this Deed that the Ministry considers to be material;
    - (iii) any enforcement action is commenced against the Recipient under laws, regulations, codes, standards or any applicable conventions in relation to the Project or in any other capacity;
    - (iv) this Deed is terminated in accordance with clause 5.6 (Termination);
    - (v) there is a substantial change to the Project which the Ministry has not approved;
    - (vi) any information provided in the application for Grant funding, the Work Programme or Annual Work Plans, in a claim for payment, or in subsequent or supporting correspondence is found to be incorrect or incomplete to an extent which the Ministry considers to be material;
    - (vii) if the Ministry judges the performance of the Recipient regarding health and safety in relation to the Project to be unsatisfactory;
    - (viii) the Ministry has consented to a change in the Project which in its opinion reduces the amount of Grant needed;
    - (ix) an Insolvency Event occurs in relation to the Recipient; or
    - (x) any other circumstances or events that in the reasonable opinion of the Ministry are likely to adversely affect the Recipient's ability to deliver the Project in accordance with the requirements for the delivery of the Project or result in a risk that the Project as approved will not be completed.
  - (b) The Recipient agrees that on receipt of notice requiring repayment of the Grant (or a portion thereof) it shall make such repayment within 20 Working Days of the date of the notice.
- 5.6 **Termination:** Without prejudice to any other rights to which the Ministry may be entitled, if:
- (a) the Recipient breaches, or fails to properly or promptly perform, any of the Recipient's obligations in a way that the Ministry considers to be material;
  - (b) the Recipient fails to achieve any Project activity in a way that the Ministry considers to be material;
  - (c) any direct or indirect change of ownership or control of the Recipient occurs which is contrary to clause 4.17 (Assignment) and in the reasonable opinion of the Ministry reduces the Recipient's ability to perform its obligations under this Deed;
  - (d) an Insolvency Event occurs in relation to the Recipient;
  - (e) the Ministry believes that the Recipient is generally in financial difficulty which, in the reasonable opinion of the Ministry, reduces the Recipient's ability to perform its obligations under this Deed; and/or
  - (f) the Ministry reasonably considers that the Recipient and/or any acts or omissions of the Recipient (whether or not related to the Project):



- (i) is bringing the Fund, the Ministry, the Minister or the New Zealand Government into disrepute; and/or
- (ii) has become undesirable in light of the Fund's objectives or those of the Minister,
- (g) any enforcement action against the Recipient is successful under laws, regulations, codes, standards or any applicable conventions in relation to the Project;
- (h) if the Ministry judges the performance of the Recipient regarding health and safety in relation to the Project to be unsatisfactory,

then the Ministry may:

- (i) withhold any payment otherwise due to the Recipient until the matter is resolved to the Ministry's reasonable satisfaction; and/or
- (j) suspend or terminate (in whole or in part) this Deed by written notice to the Recipient with immediate effect.

- 5.7 **Termination on Expiry:** If the Recipient has not completed the Deliverables to the Ministry's reasonable satisfaction by the Expiry Date, the Ministry may terminate this Deed at any time by written notice to the Recipient with immediate effect.
- 5.8 **Termination by Notice:** The Ministry may terminate this Deed at any time by giving the Recipient at least one month's written notice.
- 5.9 **Ministry Not Liable:** The Ministry will not be liable in contract, tort (including negligence) or otherwise to the Recipient or any other person for any direct or indirect damage, loss or cost whatsoever in relation to this Deed and the Recipient carrying out the Project.

## SCHEDULE 1: EXPENSE POLICY

The purpose of this expense policy is to provide the Recipient with guidance on what the Ministry considers to be reasonable travel-related expenses.

If the Recipient is eligible to claim travel-related expenses as indicated in this Deed, this policy applies unless the Deed expressly provides an exception to this policy. No travel-related expenses are payable by the Ministry if this Deed does not expressly provide for them.

### **Air Travel**

The Ministry encourages non-flexible fares as often there is little or no difference between buying two non-flexible fares and paying for a fully flexible fare, hence making the risk of cancellation worthwhile. The Ministry encourages the purchase of the cheapest fares (unless there are valid reasons for not buying these). **International air travel is not covered by the Grant unless the Deed expressly states otherwise.** Where alternatives to travel are available, such as video conferencing or teleconferencing, please use these.

### **Out of Town Travel expenses**

Actual and reasonable expenses (on receipt) for meals and other incidental expenses while on out-of-town business for the purpose of the Project may be claimed.

#### *Meal costs*

We have indicated actual and reasonable costs of meals per person up to the maximum amounts (GST inclusive) stated below as follows:

- Breakfast \$20
- Lunch \$20
- Dinner \$50

Alcohol purchases are a personal expense and therefore cannot be charged back to the Ministry as part of Travel expenses.

#### *Accommodation*

The Ministry will contribute up to \$200 per night (GST inclusive) per person for accommodation in New Zealand.

#### *Mini-bar*

Mini-bar charges are a personal expense and therefore cannot be charged back to the Ministry as part of the Recipient's accommodation bill.

### **Other Expenses**

#### *Taxis/parking costs*

The Recipient should use other more cost effective and environmentally friendly options (eg walk, bus) wherever feasible and practicable. Therefore the Recipient should use taxis, Uber or rental cars moderately and conservatively where necessary for the delivery of the Project. Taxi/Uber/rental car and/or parking costs may be reimbursed if incurred in delivering the Project. The Recipient must provide receipts for such costs. If supporting documentation (eg, receipts) cannot be provided, the charge will not be reimbursed.

#### *Use of private motor vehicle*

The Recipient may use a private vehicle for business relating to the Project. Mileage may be claimed at the standard mileage rate for motor vehicles stated on the 'Mileage rate for self-employed people and reimbursing employees' page on the Inland Revenue website. Where travel is undertaken in a personal vehicle, the assumption is that the individual travelling is principally responsible for insurance coverage. The Ministry will not be liable for any costs incurred in the event of an accident under these circumstances.

#### *Phone calls*

The Recipient should ensure the cheapest option is used for making calls. Personal calls are not covered by the Grant. Project related calls are reimbursed upon receipt of supporting documentation. Calls charged to hotel bills are often extremely expensive and should be avoided where possible.



## SCHEDULE 2: PUBLICATIONS

### Ministry for the Environment or Freshwater Improvement Fund Logo

The Ministry for the Environment or Freshwater Improvement Fund logos may not be used in any publication without the prior and express written approval of the Ministry; any use must be consistent with the guide to using the logo provided by the Ministry.

### Acknowledgments

All publications must acknowledge that financial support has been received from **"the Freshwater Improvement Fund, which is administered by the Ministry for the Environment."**

### Disclaimer Clause

The following disclaimer must appear on the inside front cover of all publications supported by the Freshwater Improvement Fund.

*"The Ministry for the Environment does not necessarily endorse or support the content of the publication in any way."*

### Copyright Clause

All publications supported by the Freshwater Improvement Fund must include the following clause relating to copyright:

*"This work is copyright. The copying, adaptation, or issuing of this work to the public on a non-profit basis is welcomed. No other use of this work is permitted without the prior consent of the copyright holder(s)."*

Or an alternate version is:

*"Reproduction, adaptation, or issuing of this publication for educational or other non-commercial purposes is authorised without prior permission of the copyright holder(s). Reproduction, adaptation, or issuing of this publication for resale or other commercial purposes is prohibited without the prior permission of the copyright holder(s)."*

### Paper and Ink

You should consider using environmentally sound paper and inks when producing publications. Preferably use paper with a recycled content that is either elemental chlorine free or totally chlorine free. Specify vegetable inks or mineral-free inks wherever possible.

### Electronic Copies of Written Material

On completion of the Project all written results must be provided in an electronic Word Format plus two printed copies. Where possible, please also publish electronic copies of written material to your website and provide us with the URL. We will link to these from our website.

### Websites

It is recommended that any website, or content published on a website, developed using the Grant is developed in accordance with the NZ Government Web Guidelines to ensure it is accessible to a wide audience.

### Information systems

It is recommended that any information system, including databases, developed using funds from this Deed observes the standards in the E-government Interoperability Framework (e-GIF). Following the e-GIF will allow the information system to more easily work together with systems in government agencies and other organisations that are following the e-GIF.

Any programmes, databases or spreadsheets must have instructions for their use, including the versions of software needed to run databases or spreadsheets, and the platforms on which the software will run. These instructions should be in the form of a short word file.

### **SCHEDULE 3: AUDIT**

#### **Scope of audit**

Freshwater Improvement Fund projects may be randomly selected for an audit by the Ministry (separate from any audit requirements imposed on the Recipient in the special terms). The Ministry may also carry out an audit at its sole discretion. An audit may take the form of a full technical, financial, compliance and/or health & safety audit, or a more informal assessment, of the Recipient and/or Sub-Recipient(s). The purpose of an audit is to check compliance with the terms and schedules of this Deed, the appropriate use of the Grant and/or reviewing the Recipient's ability to perform any obligations under or in connection with this Deed.

#### **Audit requirements**

The Ministry will inform the Recipient if an audit is to be carried out (**Notification of Audit**) and will seek an appropriate date and time for both parties. The Recipient must within three Working Days of the Notification of Audit agree a date and time. The date of the audit must be within 10 Working Days of the Notification of Audit. Audits will usually be carried out either by a fully qualified accountant or technical specialist who is independent of the Ministry or by Ministry staff. In most cases, the Ministry's representative for the Project will accompany the auditor. The Recipient must promptly provide or ensure the provision of adequate access, assistance and facilities for audit personnel as required by the Ministry during the hours of 8:00am and 5:00pm on Working Days.

#### **Audit report**

A full report of the outcome of any audit may be available to the Recipient upon request.

#### **Cost of audit**

In the event that the audit reveals any misappropriation of the Grant or material discrepancies (particularly those related to Project activities and Deliverables), the Recipient will be liable for the costs of an audit, as well as the repayment of any misappropriated Grant monies.



## SCHEDULE 4: CAPITAL ASSETS

### 1. Asset Register

Capital Asset	Capital Cost	Portion of Grant	Restriction Period
N/A	N/A	N/A	N/A

### 2. Additional Terms and Conditions

- 2.1 All Capital Assets will be and remain the property of the Recipient and will at all times be at the risk of the Recipient. The Recipient will bear the risk of any loss, theft, damage or destruction of any Capital Assets and if Capital Assets require repair or replacement, the Recipient will bear the cost of such repair or replacement.
- 2.2 The Recipient will maintain an up to date register of Capital Assets in the form set out in section 1 of this Schedule 4. Any changes to the register shall be made in accordance with this Deed and promptly notified to the Ministry in writing.
- 2.3 In consideration of the Ministry consenting to the application of all or part of the Grant to pay for Capital Costs, the Recipient agrees that, during the Restriction Period, the Recipient's ability to deal with Capital Assets shall be restricted as set out in sections 2.4 to 2.9 below.
- 2.4 During the Restriction Period, the Recipient shall not, without the prior written consent of the Ministry:
- (a) sell, assign or pledge any Capital Asset; or
  - (b) underlet, lend or otherwise part with possession of any Capital Asset; or
  - (c) create, agree to create, allow to come into existence or permit to subsist any Security Interest, mortgage, charge (fixed or floating), encumbrance, hypothecation, lien, pledge, trust, finance lease, deferred purchase, sale and lease-back, sale and repurchase, flawed asset arrangement, title retention or any other arrangement which has the practical effect of securing payment or performance of an obligation over or affecting all or any part of any Capital Asset.
- 2.5 During the Restriction Period, the Recipient shall:
- (a) protect all Capital Assets against distress, execution and seizure;
  - (b) maintain all Capital Assets in a good state of repair and in good working order and condition; and
  - (c) upon request by the Ministry, notify the Ministry of the present location of any Capital Asset.
- 2.6 During the Restriction Period the Recipient shall maintain at its cost insurance for all Capital Assets against all such risks as it is prudent in accordance with best commercial practice to insure against and any other risks which the Ministry may from time to time reasonably require for their full replacement value or on such other basis as the Ministry may agree in writing, and shall provide evidence of such insurance as and when reasonably requested by the Ministry.
- 2.7 If any of the following events occurs (whether or not within the control of any party) at any time prior to the expiry of the Restriction Period:
- (a) the Recipient fails to perform or observe any obligation under this Deed regarded by the Ministry as material, including the obligations in sections 2.4 to 2.6 in this Schedule 4, and, in the case of a failure which is capable of remedy, that failure is not remedied within 10 calendar days after written notice thereof has been given to the Recipient by the Ministry;
  - (b) any representations or warranty made under or in connection with this Deed by the Recipient is false or misleading in any respect regarded by the Ministry as material; or
  - (c) the Recipient suffers an Insolvency Event,
- then the Recipient must notify the Ministry, immediately on becoming aware of it, of the occurrence of such event and at any time (and notwithstanding the previous waiver of any default) the Ministry may by notice to the Recipient declare any or all of the Clawback Amount to be immediately due and payable.
- 2.8 In order to secure the Recipient's obligations under this Deed in respect of the Clawback Amount, the Recipient hereby grants to the Ministry a Purchase Money Security Interest (as that term is defined in the Personal Property Securities Act 1999) in each Capital Asset. The Recipient will take all necessary steps (including as required by the Ministry from time to time) to ensure that the Security Interest becomes a "Perfected Security Interest" (as that term is defined in the Personal Property Securities Act 1999) including:

- (a) giving the Ministry written notice immediately following (and in any case, within two Working Days) the Recipient taking possession, or a person taking possession on the Recipient's behalf, of a Capital Asset;
- (b) giving the Ministry all necessary information for the Ministry to effect a registration to perfect a Security Interest; and
- (c) signing and delivering any necessary documentation.

The Recipient waives its right to receive a copy of any verification statement in relation to any Security Interest created by this Deed.

- 2.9 The Ministry will, at the expiry of the Restriction Period, register a release of any relevant financing statement on the Personal Property Securities Register.



<b>SCHEDULE 5: MULTIYEAR PROJECTS</b>
---------------------------------------

**Additional terms**

- 1.1 The Ministry shall, subject to section 1.3 of this Schedule 5, pay Grant funding to the Recipient for each Financial Year as set out below.

**Financial Year 1 ("FY1")**

The lesser of:

- (a) the total amount set out in the Financial Year 1 Tasks/Activities table in the relevant Annual Work Plan; or
- (b) the percentage of the actual total cost of the Project payable from the Fund assessed over the duration of FY1, as specified in the relevant Tasks/Activities table (if any); or
- (c) An amount equal to the difference between the actual total cost of the Project for FY1 and the total value (assessed by the Ministry) of any type of contribution to the Project by the Recipient and/or from any other source.

**Financial Year 2 ("FY2")**

The lesser of:

- (a) the total dollar amount set out in the Financial Year 2 Tasks/Activities table in the relevant Annual Work Plan; or
- (b) the percentage of the actual total cost of the Project payable from the Fund assessed over the duration of FY2, as specified in the relevant Tasks/Activities table (if any); or
- (c) An amount equal to the difference between the actual total cost of the Project for FY2 and the total value (assessed by the Ministry) of any type of contribution to the Project by the Recipient and/or from any other source.

**Financial Year 3 ("FY3")**

The lesser of:

- (a) the total dollar amount set out in the Financial Year 3 Tasks/Activities table in the relevant Annual Work Plan; or
- (b) the percentage of the actual total cost of the Project payable from the Fund assessed over the duration of FY3, as specified in the relevant Tasks/Activities table (if any); or
- (c) An amount equal to the difference between the actual total cost of the Project for FY3 and the total value (assessed by the Ministry) of any type of contribution to the Project by the Recipient and/or from any other source.

**Financial Year 4 ("FY4")**

The lesser of:

- (a) the total dollar amount set out in the Financial Year 4 Tasks/Activities table in the relevant Annual Work Plan; or
- (b) the percentage of the actual total cost of the Project payable from the Fund assessed over the duration of FY4, as specified in the relevant Tasks/Activities table (if any); or
- (c) An amount equal to the difference between the actual total cost of the Project for FY4 and the total value (assessed by the Ministry) of any type of contribution to the Project by the Recipient and/or from any other source.

**Financial Year 5 ("FY5")**

The lesser of:

- (a) the total dollar amount set out in the Financial Year 5 Tasks/Activities table in the relevant Annual Work Plan; or
- (b) the percentage of the actual total cost of the Project payable from the Fund assessed over the duration of FY5, as specified in the relevant Tasks/Activities table (if any); or
- (c) An amount equal to the difference between the actual total cost of the Project for FY5 and the total value (assessed by the Ministry) of any type of contribution to the Project by the Recipient and/or from any other source.

**Financial Year 6 ("FY6")**

The lesser of:

- (a) the total dollar amount set out in the Financial Year 6 Tasks/Activities table in the relevant Annual Work Plan; or
- (b) the percentage of the actual total cost of the Project payable from the Fund assessed over the duration of FY6, as specified in the relevant Tasks/Activities table (if any); or
- (c) An amount equal to the difference between the actual total cost of the Project for FY6 and the total value (assessed by the Ministry) of any type of contribution to the Project by the Recipient and/or from any other source.

1.2 If this Deed provides for a multi-year Project then any funding under this Deed in respect of FY2, FY3, FY4, FY5 or FY6 shall be subject to:

- (a) the Ministry being satisfied in all respects with the Recipient's use of the Grant funding for the previous Financial Year;
- (b) the Recipient not having been in breach of this Deed;
- (c) the agreement of an Annual Work Plan for the relevant Financial Year which is acceptable to the Ministry; and
- (d) the availability of funds, or reductions, in the Fund due to changes in Fund, or directives of the New Zealand Government.

1.3 In the event that any of the above conditions have not been satisfied then the Ministry may:

- (a) withhold payment of any funding until the conditions have been satisfied; or
- (b) immediately terminate this Deed by notice in writing to the Recipient and will be under no obligation to pay any further funding in relation to the Project.



## SCHEDULE 6: CHANGE CONTROL PROCESS

### 1.1 Definitions:

1.1 For the purposes of this Schedule, the following words shall have these definitions unless the context requires otherwise:

**Change** means any amendment, deletion or addition to the Work Programme, Annual Work Plans or this Deed;

**Change Control Register** has the meaning given to it in paragraph 2.7 of this Schedule;

**Change Request** means a written request for a Change which shall be substantially in the form provided by the Ministry;

**Minor Change** means any Change (including the reallocation of Grant from one Project activity or Deliverable to another) and the Change does not:

- (i) result in a change in Project Costs;
- (ii) result in any change to an activity or Deliverable which would be likely to prevent the Project from substantially achieving its Objectives;
- (iii) affect or likely affect the total Grant;
- (iv) materially affect the Objectives;
- (v) affect or likely affect the Expiry Date; or
- (vi) amend the terms of the Deed (including to any Schedule); and

**Objectives** mean the main goals of the Project to be achieved by and as specified in the Work Programme.

### 2. Change Requests

2.1 The Recipient or the Ministry must notify the other Party, through a Change Request form, of any Changes it proposes to make to the Deed, the Work Programme, or an Annual Work Plan. Any Change must be submitted to the other Party for prior written approval in accordance with this Schedule.

2.2 **Change Request Form:** The Recipient, the Ministry, the Governance Group may issue a Change Request form at any time. The Change Request shall:

- (a) be substantially in the form provided by the Ministry;
- (b) if issued by the Recipient, include an impact assessment (being an analysis of the effect of the proposed Change, including on costs and timelines); and
- (c) if issued by the Ministry or the Governance Group, require the Recipient to complete the impact assessment in the Change Request form and return to the Ministry, the Project Board or the Governance Group as soon as reasonably practicable and in any event within 10 Working Days of receiving the relevant Change Request.

2.3 **Further Information:** If the Ministry, or the Governance Group reasonably considers it requires further information regarding a proposed Change, then the Ministry, or the Governance Group (as applicable) shall notify the Recipient and detail the further information required. The Recipient shall then re-issue the relevant impact assessment to the Ministry, or the Governance Group (as applicable) as soon as reasonably practicable and in any event within 10 Working Days of receiving such a request. The Parties may repeat the process described in this paragraph until the Ministry, or the Governance Group (as applicable) is satisfied that it has sufficient information to properly evaluate the proposed Change ("Further Information").

2.4 **Right of approval:** Within 10 Working Days of receiving an impact assessment in a Change Request or within 5 Working Days of receiving Further Information under paragraph 2.3, the Ministry shall, at its sole discretion:

- (a) approve the proposed Change, and the Change may come into effect in accordance with paragraph 2.5 of this Schedule; or
- (b) reject the proposed Change, and the Ministry shall notify the Recipient in writing. The Ministry shall explain its reasons for rejection in writing, as soon as reasonably practicable following such rejection.

- 2.5 **Change authorisation:** Any Change proposed in a Change Request will not be authorised and the Recipient shall not implement any proposed Change until:
- (a) the Change Request is signed in accordance with the Ministry's Change authorisation and sign off procedure, as notified by the Ministry to the Recipient in writing from time to time; and
  - (b) if the Change is not a Minor Change, or the Ministry otherwise requires (at its sole discretion), it is signed and delivered as a deed by the duly authorised representatives of the Parties.
- 2.6 **Costs:** The Recipient shall bear its own costs in relation to the preparation and agreement of each Change Request (including each impact assessment). For the avoidance of doubt, the Grant may not be used to fund such costs unless expressly agreed in writing by the Ministry.
- 2.7 **Change Control Register:** The Project Manager shall, for the period of this Deed, maintain a change control register, substantially in a form provided by the Ministry, documenting any and all Changes (the "Change Control Register"). The Change Control Register shall be attached to the Annual Report.



## **ANNEXURE 1: WORK PROGRAMME**

# **Freshwater Improvement Fund**

## **Work Programme for Waimea Water Augmentation Project**

**Undertaken by  
Tasman District Council  
2019-2022**



## Official information and privacy

### Official Information Act 1982

**Important:** Information presented to the Minister for the Environment or the Ministry for the Environment is subject to disclosure under the Official Information Act 1982 (OIA). Certain information may be withheld in accordance with the grounds for withholding information under the OIA. Further information on the OIA is available at [www.ombudsmen.parliament.nz](http://www.ombudsmen.parliament.nz).

Information held by the Minister or the Ministry may have to be released under the OIA in response to a request from a member of the public (or any other body) for that information. If you wish to provide sensitive information to the Minister or the Ministry which you do not want released, it is recommended you consult with the Ministry as to whether the information is necessary for the application, and whether there may be grounds in the OIA for withholding the information. For instance, if release of the information would disclose a trade secret, or be likely to unreasonably prejudice the commercial position of the person who supplied or who is the subject of the information, then there may be grounds to withhold the information. If an OIA request relating to your application is received, the Ministry will endeavour to contact you to discuss it, and what the implications of releasing your information are.

The grounds for withholding information must always be balanced against consideration of public interest that may justify release. Although the Ministry does not give any guarantees as to whether information can be withheld under the OIA, it may be helpful to discuss OIA issues with the Ministry in advance, if information provided with an application is sensitive.

### Privacy Act 1993

**Important:** The Ministry for the Environment (Environment House, 23 Kate Sheppard Place, Wellington 6011 temporarily located at Level 2, 3 The Terrace, Wellington 6011) may collect, use, hold or disclose personal information for the purpose of assessing eligibility and suitability for Freshwater Improvement Fund funding. Individuals have the right in accordance with the Privacy Act 1993 to request access to and correction of their personal information. While the provision of personal information is not mandatory, failure to provide requested information could lead to a delay in considering the application or a decline of the same.

## Introduction

This Work Programme template is completed by applicants to the Freshwater Improvement Fund who have successfully completed Stage 1 of the application process and have been invited to proceed to Stage 2 (project planning).

This Work Programme gives an overview of the entire life of the project, including purpose, objectives, benefits and estimated costs. The Work Programme is accompanied by an Annual Work Plan, which more specifically details the budget and work to be undertaken for Year One. For each subsequent project year, a new Annual Work Plan will be developed and attached to the Work Programme.

Complete all sections of this work programme template. We recommend you refer to the following documents to help you:

- *Freshwater Improvement Fund – 'Guide for Applicants 2017'* – the guide used to help you complete your original application.
- *Freshwater Improvement Fund – 'Guide for Recipients'* – the additional user guide sent to you with this Work Programme template.

If you have a question about the Work Programme that is not covered in this document or in either of the user guides provided, you can email or phone your assigned analyst at the Ministry.

## When your Work Programme is complete

Email this completed draft Work Programme to your assigned analyst. They will review it and advise you if there are any issues that need to be addressed, or if there are any outstanding questions.

### Important information

This Work Programme template is pre-populated with some of the information you provided in your original application form. Update this information as required to reflect the current status of your project. Some time may have elapsed since you first submitted the application form to the Ministry, and further information and details may now be available that were not available previously. In addition, you may need to incorporate any conditions that the Assessment Panel has made (refer to the letter you received inviting you to proceed to stage 2).



## SECTION A: Recipient details

### 1 Organisation details

*Check that the information below about your organisation is correct, and update it as required*

Organisation name	Tasman District Council
Trading name (if different)	
Description of your organisation	Unitary Authority
Physical address <i>Include postcode.</i>	189 Queen Street, Richmond, Nelson 7020
Postal address <i>Include postcode.</i>	Private Bag 4, Richmond, Nelson 7050
Telephone	03 543 8400
Website address	www.tasman.govt.nz
Legal entity status (eg, regional council, charitable trust, incorporated society, Māori trust board)	Local authority

### 2 Contact details for this project

Recipient's main contact (name and organisation)	Dennis Bush-King	Ministry's main contact	Julia Price, Analyst – Freshwater Investments
Organisation	Tasman District Council		
Email address	9(2)(a)	Email address	Julia.price@mfe.govt.nz
Phone	9(2)(a) Landline 9(2)(a) Mobile	Phone	N/A Landline 9(2)(a) Mobile
Postal address	Private Bag 4, Richmond, Nelson 7050	Postal address	PO Box 10362
Physical address	189 Queen Street, Richmond	Physical address	23 Kate Sheppard Pl, Wellington

## SECTION B: Project details

### 3 Project overview

*Check that the information below about your project is correct, and update as required*

<b>Project name</b>	Waimea Water Augmentation Project
<b>Project purpose</b>	<p>The purpose of the Project is to improve and enhance environmental minimum flows in the Waimea River and support the public good component through the construction of Waimea Community Dam. The dam will provide improved water security of supply, and improved minimum flows in the Waimea River.</p> <p>Tasman District Council (TDC) and Waimea Irrigators Limited (WIL) have set up a joint venture partnership called Waimea Water who will construct and operate the consented Waimea Community Dam.</p> <p>This constructed dam and associated infrastructure will create a ~13 million m<sup>3</sup> water storage reservoir in the upper Lee Valley, on the western flank of the Richmond Range in Tasman District (appendix 1). The Lee River is a tributary of the Wairoa River, which in turn flows to the Waimea River.</p> <p>The dam, reservoir and its associated works require the removal of vegetation (forestry, exotic and native shrublands and forest) and substantial earthworks cross the site.</p> <p>Conditions of resource consents require that a Biodiversity Management Plan (BMP) be prepared and approved prior to the start of construction activities. This FIF funded project will see the implementation of the BMP.</p>
<b>How many years will this project run for?</b>	Three and a half years
<b>Total project cost</b> <i>Do not include in-kind contributions in the total project cost.</i>	\$66,100,000
<b>Freshwater Improvement Fund contribution</b> <i>This must be no more than 50% of the total project cost.</i>	\$7,000,000

### 4 Details of your water body

*Check that the information below about your water body is correct, and update it as required*

<b>Name and location of water body</b> <i>If your project includes more than one water body, include details of each water body.</i>	Lee River, which flows into the Wairoa River which flows into the Waimea River, located behind Brightwater and the Waimea Plains, Nelson.
	<input type="checkbox"/> Lake <input checked="" type="checkbox"/> River <input type="checkbox"/> Wetland <input checked="" type="checkbox"/> Groundwater



<p>Type of water body your project applies to</p> <p><i>Select all that apply.</i></p>	<p><input type="checkbox"/> Other (Please specify)</p>
<p>Is your project located in a catchment identified as vulnerable?</p> <p><i>Refer to the Fund's map of vulnerable catchments published on Ministry for the Environment's website.</i>  <a href="https://data.mfe.govt.nz/layer/3523-fif-catchments/">[https://data.mfe.govt.nz/layer/3523-fif-catchments/]</a></p>	<p><input checked="" type="checkbox"/> Yes, in the lower reaches of the Waimea <input type="checkbox"/> No</p>
<p>Please provide the GPS coordinates of your water body</p> <p><i>If your project includes more than one water body, confirm the GPS coordinates of the largest water body only. (Please provide coordinates in decimal degrees eg, Latitude – 41.279167, Longitude 174.776486)</i></p>	<p>Upper Lee Valley X 1613407.07, Y 5409026.13</p> <p>Waimea River x 1610772.78, Y 5426803.13</p>
<p>What activities have previously, or are currently, impacting upon water quality and/or quantity?</p> <p><i>Please also indicate whether these activities are ongoing.</i></p>	<p>The water resources of the Waimea Water management zone are over-allocated as a result of decisions made in the 1970s. No new water permits have been issued since the early 1990s. A proposal to reduce allocations in 2000 met with significant opposition. The Council is again about to review all 329 permits and will reduce allocations to more sustainable levels. However in the event that the water resource can be augmented, there will be two class of permits depending on whether holders elect to support the augmentation proposal or not. Either way the augmentation will allow for a target minimum flow of 1100 l/sec to be achieved, a valuable ecological improvement on the 800 l/sec without the dam. (The ecological optimum is 1300 l/sec.)</p>
<p>What is the current state of water quality within the waterbody?</p> <p><i>If known, please include the trophic level index of the waterbody. For more information please visit <a href="https://www.lawa.org.nz/learn/factsheets/lake-trophic-level-index/">https://www.lawa.org.nz/learn/factsheets/lake-trophic-level-index/</a></i></p>	<p>Water quality of the Waimea River overall is good, it is very swimmable, clarity is good, ecoli levels low. There are occasional incidents of toxic algae in summer and some locations show presence of filamentous algae at times.</p>

## 5 Project objectives

Provide between three and six concrete statements which describe the tangible results your project will achieve. Note that some project outcomes will be achieved over a longer timeframe, however the objectives described here must be achievable within the duration of the funding. Please ensure that:

- Objectives are SMART (Specific, Measurable, Achievable, and Realistic within the Timeframe of the project). Refer Appendix 2 (page 42) of the Freshwater Improvement Fund Guide for Applicants 2017 for more information on setting SMART objectives.
- All objectives are clearly defined and achievable within the duration of the funding.
- Each objective has at least one key performance indicator (KPI).
- Successful completion of tasks and activities will lead to achievement of the project objectives.
- You have a clear plan for measuring, evaluating and reporting whether your project objectives have been met.

An example has been provided to demonstrate the level of detail required.

Objective	Key performance indicators (KPIs)	How will you monitor and evaluate the achievement of this objective?	Baseline information	Expected outcome
<i>Describe the tangible results your project is trying to achieve.</i>	<i>KPIs are concise statements about key benefits of the project and how they will be achieved.</i>	<i>How will you measure your progress and demonstrate that the objective has been achieved?</i>	<i>Describe the current situation, using the data you have available.</i>	<i>What is the expected benefit from this objective being met? How does this contribute to the purpose of your project?</i>
By mid 2022, the Waimea Community Dam will be constructed and commissioned to enhance environmental minimum flows.	<p>Earthworks – clear and establish dam footprint by Feb 2020</p> <p>River diversions – complete by end of 2019</p> <p>Construction – complete by Oct 2021</p> <p>Fish pass – commission by Feb 2022</p> <p>Fill reservoir – filled by Sep 2022</p> <p>Commission dam mid 2022</p>	<p>No water rationing required for urban and rural users</p> <p>Minimum flow of 1100 l/sec is achieved at all times and aquifer levels do not fall below levels set in the Tasman Resource Management Plan</p> <p>Electrical conductivity readings are less than 1.0 millisemens per centimetre</p> <p>Real time hydrometric monitoring will measure river flow and aquifer levels</p>	<p>Water rationing without the dam is expected nine years out of ten after new consents are issued.</p> <p>Previous informal minimum flow used has been 225 l/sec which is well below even the 600 l/sec needed to ensure minimum ecological health.</p>	<p>The benefit will be an augmentation dam that catches water when there is plenty in winter and which releases water when needed in dry summers.</p> <p>Providing improved water security of supply, improved minimum flow in the Waimea River, and no salt water intrusion risk into the confined aquifers.</p>



		Three monthly monitoring of conductivity and more regular at times of low river flow or declining aquifer levels		
By October 2022, the construction of the Waimea Community Dam will be complete in accordance with the Biodiversity Management Plan ( <i>Waimea Water and Waimea Irrigators Ltd, January 2019</i> )	<p>Starting in 2019 and progressing throughout the course of the project, the following activities are intended:</p> <p>Trap and transfer programme for adult out-migrating eels – commence late 2019 through to 2022</p> <p>Propagation and relocation of rare/threatened plants – commence 2019 through to 2022</p> <p>Protection, restoration and enhancement of alluvial and riparian forest downstream of the dam – commence 2020</p> <p>Restoration and protection of Rough Island coastal duneland vegetation communities – commence 2019 with planting to occur late 2020</p> <p>Protection and restoration of an existing alluvial podocarp forest ecosystem – to commence 2019 and to be completed by 2022</p> <p>Monitor to assess the severity and extent of effects on</p>	<p>Achieved planting of native species over the area described in the Biodiversity Management Plan and in general accordance with the diversity of plant species and composition listed in the planting plan.</p> <p>Achieved a 90% level of canopy closure by native trees and shrubs by five years following the completion of pioneer planting of each planting block.</p> <p>Monitoring will be undertaken at the site to report on progress, to identify potential management issues, and to enable the consent holder to formulate corrective actions.</p>	<p>WWL is required to remediate the land within the project footprint upon completion and deliver a number of carbon emissions offsetting projects within the region to compensate for trees necessarily removed during construction.</p> <p>WWL will ensure that rare plant species will be protected and transplanted in accordance with resource consent conditions.</p>	<p>Remediating the land and protecting plant species provides opportunity for raising community awareness to optimise the benefits from these environmental projects and WWL will develop an Environment and Sustainability Management Plan working with Ngāti Koata, Fulton Hogan Tasman Joint Venture (FHTJV) our delivery partners and in communication with our community.</p>

downstream gorge turf plant communities – to commence following relocation in 2019			
--	--	--	--

## 6 What environmental, social, cultural and economic benefits will occur as a result of this project?

Ecosystem services are the benefits people obtain from ecosystems. Identify which of the ecosystem service categories listed below will be enhanced or improved through the delivery of your project. If required, you may include additional types of benefit and/or value in the 'other' category. See pages 24-25 of the Freshwater Improvement Fund Guide for Applicants 2017 for information on how to complete this question.

Ecosystem service	Description	Measure
	<p>For those ecosystem services categories that apply to your project, describe how the benefits will be realised through the delivery of the project.</p> <p>Include an estimated timeframe of when changes may occur (eg short-, medium- or long-term).</p>	<p>What indicators (qualitative or quantitative) you will use to measure change?</p> <p>Include any assumptions underlying the nature and estimated magnitude of the changes.</p>
Healthier River	With a Waimea Community Dam, the Council would aim to ensure a minimum flow of 1100 l/sec to provide a far healthier river ecology that meets the objectives of the Nation Policy Statement on Freshwater Management (NPS-FW). If there is no dam, the target minimum river flow under the Tasman Resource Management Plan will be 800 l/sec to protect our aquifers from the threat of saltwater intrusion contaminating groundwater bores and our drinking water supply.	Low flow does not protect the natural ecosystem of the river and exposes Council to criticism and potential challenge that it would not be meeting its obligations under the NPS-FW. This may mean the Council is forced to consider a higher minimum flow and even greater water use cuts when the planning rules are up for review again in 2025.
Biodiversity Offset Benefits	As agreed through a consent order before the Environment Court with the Department of Conservation, Fish and Game, and the Royal Forest and Bird Protection Society, the scheme will provide a compensation fund that will support biodiversity restoration projects in the Waimea River catchment on a long-term ongoing basis, in recognition of the effects of construction.	Projects will provide a significant investment for native biodiversity and indigenous ecosystems on public and privately owned land, and produce lasting benefits. The capital value is about \$2.1million and annual operating spend of nearly \$250,000 in the initial years. The enhancement programme has already commenced with the successful propagation of the rare and endangered herbaceous plant 'New



		Zealand shovel mint' ( <i>Scutellaria novae-zealandiae</i> ), found outside of the DOC land, but which DOC is now relocating to other areas in Tasman-Nelson
Cultural redress	The proposed Dam will support Te Tau Ihu Iwi by addressing three of their key concerns – low flows in the Waimea River, over-allocation of the resource, and protection of the mauri and wairua of the river system.	Iwi will be involved in the on-going monitoring of cultural and environmental health of the river and coastal springs, which are highly valued by Iwi. There will also be access for local iwi to harvest ngahere (trees) and pakohe (argillite) which are treasured taonga.
Community Benefits	The Dam will provide a safe and secure community water supply for about 20,000 people who currently live in the Waimea Basin, provide a secure supply of irrigation water to up to 3,800 hectares of mostly food producing land, and enhance minimum flows in the Waimea River.	Water will be available for our growing communities in Richmond, Nelson, Brightwater, Redwood Valley, and Mapua, as well as enabling a further 1,200 hectares of land to be irrigated in the future. It will also provide our residents and businesses with greater water security in the face of climate change.
Compliance with National Policy Statement on Freshwater Management	The augmentation dam, along with the review of all water permits to more sustainable allocations, will allow us to address the issue of over allocation and thereby meet the requirements of the NPS-FW.	Release of new permits within sustainable limits before 1 October 2019.
Economic Benefits	<p>The benefits of the Dam and the costs of not having a dam have been well researched (<a href="#">Northington Partners, 2010</a>; <a href="#">NZIER, 2014</a>; <a href="#">NZIER, 2014</a>; <a href="#">Northington Partners, 2016</a>, <a href="#">Northington Partners 2017</a>; <a href="#">NZIER 2017</a>).</p> <p>The Dam would enable investment in higher productivity land uses, and the Nelson-Tasman regional GDP is estimated to expand by \$60.6 million per year. Much of this would be driven by higher export revenue associated with agricultural production and profitability would encourage additional investment. All Nelson-Tasman residents would be better off with household consumption increasing by \$13.9 million per year due to higher incomes (wages and profits) linked to production</p>	A secure and reliable water supply is needed to support and drive business activity across the Waimea Plains and Nelson City. Without a secure water supply, businesses will not have the confidence to reinvest in their current operations, and we will not be successful in retaining and attracting businesses and workers into our Region.

	<p>levels. This increased economic activity will not come from dairying but rather the existing and future horticultural activity and associated downstream processing.</p>	
--	---	--



## Activity table and estimated budget for the life of the project

For each objective, list the main tasks/activities that will be undertaken and total estimated costs for the year. All figures should exclude GST.

Objective	Activity		
	Year 1 - 2019/20	Year 2 – 2020/21	Year 3 - 2021/22
1. By mid 2022, the construction of the Waimea Community Dam will be complete to enhance minimum environmental flows	• Dam site clearance - vegetation removal and earthworks	• Earthworks, embankment	• Build 3 bridges
	• Undertake river diversions	• Plinth and grouting	• Construct spillway
		• Concrete works, wave protection and grouting	• Mechanical and electrical work
			• Instrumentation installation
			• Control building built and commissioned
			• Commission dam
2. By October 2022, the construction of the Waimea Community Dam will be complete in accordance with the Biodiversity Management Plan	• Design fish pass	• Protection, restoration and enhancement of alluvial and riparian forest downstream of the dam	• Fill reservoir
	• Propagation and relocation of rare/threatened plants	• Propagation and relocation of rare/threatened plants	• Start 'trap and transfer' programme for adult out-migrating eels
	• Commence carbon offset planting regimes	• Continue carbon offset planting regimes	• Install fish pass
			• Validate fish pass
3. Other/miscellaneous	• Hold governance group meetings as required	• Hold governance group meetings as required	• Continue carbon offset planting regimes
	• Annual independent financial audit	• Annual independent financial audit	• Hold governance group meetings as required
	• Ministry reporting requirements	• Ministry reporting requirements	• Annual independent financial audit
			• Ministry reporting requirements
<b>Total estimated budget</b>	<b>\$28,100,000</b>	<b>\$18,300,000</b>	<b>\$19,700,000</b>

## SECTION C: Resources and capability

### 7 Funding Information

List all sources of income for the duration of your project, including cash contributions from your organisation, co-funding from external sources and the maximum amount approved from the Freshwater Improvement Fund.

	Year 1 (2019/20)	Year 2 (2020/21)	Year 3 (2021/22)	Total
Your organisation's cash contribution to the project	\$4,900,000	\$7,300,000	\$11,100,000	\$23,300,000
Waimea Irrigators Limited	9(2)(b)(ii)			
Crown Irrigation Investment Limited (loan and grant)				
Interest income				
FIF contribution (approved amount)	\$3,000,000	\$3,000,000	\$1,000,000	\$7,000,000
Total cost of project	\$27,600,000	\$17,800,000	\$20,700,000	\$66,100,000
FIF % of total project costs (for office use only)	11%	17%	5%	11%

Total project costs are \$104.4m, with \$38.3m funded prior to 1 July 2019



## 8 What is the status of external funding?

*If any of the funding for your project is not yet confirmed, please provide a summary of how much is 'pending' and when you expect this to be secured. Where funding for multi-year projects is not confirmed, please describe a plausible pathway to securing the additional income required.*

All funding was confirmed by the parties on 21 December 2018.

## 9 Partnership and collaboration

*Provide details of organisations that you will be partnering with in the delivery of this project. Please outline the nature of each of the partner's involvement and what they will contribute to the successful delivery of the project.*

Organisation name	Contact details <i>Name, phone number and email</i>	Details of involvement or collaboration <i>For example, contribution of funding or resources, involvement in decision-making, responsibility for delivering a component of the project.</i>
Waimea Water Limited	Mike Scott Chief Executive 9(2)(a) [REDACTED] [REDACTED] 9(2)(a) [REDACTED]	Council controlled organisation to build, own and operate the dam
Ngāti Koata Iwi Trust	Hemi Toia Chief Executive 9(2)(a) [REDACTED] 9(2)(a) [REDACTED]	Contributing land to the project
Department of Conservation	Lionel Solly 9(2)(a) [REDACTED] 9(2)(a) [REDACTED]	Biodiversity offset works, including pest management activity
Fulton Hogan Taylors Joint Venture	Peter Wissel Project Manager	Construct the dam, site clearance , access, roading

	9(2)(a)	
Damwatch Engineering	Peter Amos 9(2)(a)	Construction related professional services, ECI, design
Rawlinsons	Lawrie Saegers 9(2)(a) 9(2)(a)	Quantity surveyors providing construction related quantity surveying services

## 10 Project team

*Provide details of your project team and confirmation of their availability for the duration of the project. Please provide details for your project manager in the first row.*

Name	Organisation	Role in project	Phone	Email
Dennis Bush-King	Tasman District Council	Project manager	9(2)(a)	
Mike Scott	Waimea Water Limited	CEO		
Richard Milsom	Waimea Water Limited	Project Service manager		
Richard Timpany	Waimea Water Limited	Commercial Manager		
Alisdair Mawdsley	Waimea Water Limited	Environmental Manager		

The construction of the dam will be undertaken by a council-controlled organisation, Waimea Water Ltd, which has a Board of Directors consisting of seven members: four independent members appointed by Tasman District Council, two appointed by Waimea Irrigators Limited and one appointed by Ngāti Koata. There is also a Project office.



## 11 Governance and management structure

<p><b>Project governance</b></p> <p><i>Describe the governance structure/s that will be implemented to ensure monitoring and management of performance and effective decision-making occurs. Include information on members of the governance group and their skills.</i></p>	<p>The Waimea Water Limited's (WWL) Board is responsible to its shareholders, who are Tasman District Council (53%) and Waimea Irrigators Ltd (47%). As such, WWL is classified as a Council Controlled Organisation (CCO). Appropriate reporting structures are in place.</p> <p><b>WWL Board:</b></p> <p>Ensures the company's prosperity by collectively directing the company's affairs while simultaneously safeguarding the interests of its shareholders, lenders and the community. The Board reports to Council six monthly and is made up of the following members:</p> <p>Karen Jordan (Chair) – TDC  Doug Hattersley - TDC  Julian Raine - WIL  Bruno Simpson - WIL  Ken Smales - TDC  Andrew Spittal – Ngāti Koata  David Wright - TDC</p> <p><b>WWL and Fulton Hogan Taylors Senior Staff support:</b></p> <p>Responsible for operations within WWL including the contract management of the joint venture contractor (Fulton Hogan) engaged to build the dam, risk management, health and safety, biodiversity programmes, resource and regulatory compliance etc.</p> <p>Mike Scott – Waimea Water, CEO  Ian Lonie – Waimea Water, Project Director  Alisdair Mawdsley – Waimea Water, Environmental Manager  Peter Wissel – Project director (Joint Venture entity FHT)</p> <p><b>Tasman District Council Senior Management Team:</b></p> <p>Provide input and oversight as shareholder representatives of WWL as a council controlled entity. This team will fulfil the role of Governance Group as set out in the Deed and is named the Council Senior Leaders Governance Group in the Annual Work Programme.</p> <p>Janine Dowding – Chief Executive Officer  Dennis Bush-King – Environment and Planning Manager  Mike Drummond – Corporate Services Manager  Richard Kirby – Engineering Services Manager  Susan Edwards – Community Development Manager</p>
<p><b>Managing funds</b></p> <p><i>Provide information about how you will manage the project funds. Include information about how you will procure goods and services, approve payments, and</i></p>	<p>The Project is overseen by the WWL Board. The Council has in place a Statement of Intent (SOI) for WWL, which is approved by WWL's shareholders and reviewed annually and this governs the performance of WWL as a CCO.</p> <p>The WWL Board provides formal 6 monthly updates to Council as required under the LGA. This reporting covers both financial and non-financial matters and is</p>

monitor and address budget overspend.	<p>aligned to the SOI. The WWL CEO will in addition, provide quarterly updates to the Council CEO. These are included in the CEO's activity report to full council.</p> <p>Dennis Bush-King oversees the companies compliance with delivering the bio security offsets as agreed, along with the oversight of their compliance with the other resource consent conditions - a statutory council role that Dennis leads.</p> <p>Mike Drummond oversees financial matters relating to the Project. Each month Council, CIIL and/or WIL must make contributions to the project to meet that month's costs. Given the magnitude of funding, a formal process with the company requires progress reports to CIIL in order to drawdown on their loan facility and is aligned to their SOI which needs approval annually by shareholders.</p> <p>FIF funding will be paid annually to TDC on completion of that years' activities (see Annual Work Plan). TDC will transfer funds to reimburse WWL (as project deliverer) for work complete.</p>
---------------------------------------	---

## 12 Health and safety

*It is important that you have the necessary health and safety policies, resources and expertise to safely undertake and complete the project. You must comply at all times with the requirements and provisions of the Health and Safety at Work Act 2015 (HSWA). You are also required to submit a health and safety plan for your project during the Stage 2 process.*

<p><b>Does your organisation have a health and safety policy?</b></p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><i>If yes, state when this was last reviewed/updated.</i></p> <p>2018</p>
<p><b>Has your organisation been issued with any notices under health and safety legislation?</b></p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><i>If yes, please provide details.</i></p>
<p><b>Who will be responsible for health and safety for the project?</b></p> <p><i>Please state name, organisation and job title</i></p>	<p>The Council's contractor, Fulton Hogan Taylors Joint Venture, is required in accordance with the contract to comply with all health and safety requirements and to have in place required health and safety management plans and appropriately qualified health and safety personnel.</p> <p>The Council and Fulton Hogan Taylors Joint Venture (and any other third parties involved in the Project's delivery) will consult, co-operate, and co-ordinate their activities with a view to ensuring they comply with their respective H&amp;S obligations as they relate to the delivery of this project.</p>



## 13 Risk management

Provide a brief description of the major risks to the project achieving the intended outcomes. Include consideration of potential barriers that may pose a risk to the success of the project. Where possible give an indication of the likelihood and significance of the risk and any mitigation strategies to be included in the project.

Potential risk <i>Identify the potential risk to your project (for example, project not completed on time, unpredictable events such as weather, lack of resource commitment, time and cost estimates too optimistic, unexpected budget cuts, stakeholders changing requirements after the project has started, risks to the industry or sector to which the organisation belongs).</i>	Level of risk <i>Low, medium or high.</i>	Impact on project <i>Describe the impact the risk would have on the project (for example, misunderstandings, duplication of work, incomplete work).</i>	Consequence on project <i>Minor, moderate or severe.</i>	Strategy to mitigate <i>Describe the process you will use to minimise and manage the risk (for example, project manager monitors functional roles to ensure enough time is allocated to complete each task/activity and the project as a whole).</i>
Cost Escalation for the Project	Low	<p>The construction contract for the Project was negotiated by the Council and Waimea Irrigators Limited (WIL) with Fulton Hogan/ Taylors Joint Venture. The construction contract final estimate is 9(2)(b)(ii). In estimating the costs the Council and WIL have used robust methods and engaged professional advisors to verify cost estimates including the construction, operation, maintenance and financing costs of the Project. Of the total Project cost 9(2)(b)(ii).</p> <ul style="list-style-type: none"> <li>9(2)(b)(ii) is the construction price</li> <li>9(2)(b)(ii) is direct costs (includes design); and</li> <li>9(2)(b)(ii) risk is the remaining contingency and risk allowances.</li> </ul> <p>The available risk and contingency allowance of 9(2)(b)(ii) can be broken down into allocated risk of 9(2)(b)(ii) and 9(2)(b)(ii) unallocated.</p>	Severe	<p>The Project Governance Board has used all reasonable endeavours to budget for the costs associated with the Project. The budget does include contingencies. Cost drivers are strictly monitored. Particular attention being given to minimise the risk of escalation including going back and asking the designer and contractor to see where savings can be made without jeopardising the success of the project.</p> <p>Agreed budgets form the basis for the detailed set of funding and shareholder agreements that include clauses that assign liability for any cost over-runs (see the Governance section above for further detail).</p>



Construction and Infrastructure Risks for the Project	Medium	<p>The construction contract for the Project will involve risk for the Project including:</p> <ul style="list-style-type: none"> <li>• delays occurring at the start of construction</li> <li>• the ground conditions and dewatering solutions presenting challenges</li> <li>• poor contractor or sub-contractor execution</li> <li>• unforeseen contractor project costs</li> <li>• contractors or sub-contractors experiencing financial distress</li> <li>• third party damage/interference affecting the Project infrastructure</li> <li>• a cost risk in ensuring the Project is completed within budget amounts</li> <li>• design risks relating to the performance of the works undertaken and the design of the Dam (both during construction and post-construction).</li> </ul>	Moderate – high proportion of costs have been fixed but some risk is still attached to other project variables	<p>Construction contracts: A competitive proposal process, run under probity conditions, ensured that the contractor awarded the Early Contractor Involvement (ECI) process has the appropriate level of expertise and capacity to perform the works. The WWL Board will ensure the construction contract with the successful contractor (Fulton Hogan/Taylor's Joint Venture) will include the appropriate levels of warranties and contractor performance bonds.</p> <p>The contractors selected are reputable, very well established and have substantial Balance Sheets. Appropriate types and levels of insurance for the Project will be in place.</p> <p>Performance: The Project has endeavoured to mitigate performance risks where possible by using competent design engineers, peer reviews and engaging experts who have successfully designed other dams. The construction contract will contain the appropriate warranties and contractor performance bonds. The Dam has been designed to requirements set out by the New Zealand Society of Large Dams (NZSOLD), the guidelines specifying dam construction in New Zealand. An Engineer to the Contract has been appointed and will have an</p>
---	--------	---	--	---

				<p>independent role to ensure the contractor and the designer perform to the required standards.</p> <p>Geotechnical: The Project has commissioned site sampling, geotechnical assessments and modelling that has been peer reviewed. The Geotechnical work includes the assessment of the impact of earthquakes on the Dam. Further, the construction method has been chosen to mitigate any potential damage caused by seismic activity during construction.</p> <p>Hydrological: Detailed hydrological advice has been received on the connectivity of the groundwater system to ensure environmental and other benefits will be delivered.</p> <p>During the ECI process the contractor obtained independent expert advice related to the effects of potential flood events during the construction phase. The methods for handling such events have been planned and financial allowance, including insurances, have been factored into the various probabilities.</p>
Land and Access	Medium	Land and access negotiations are still being finalised with one landowner regarding 2 hectares. Full access to the project office site has been obtained; tail end negotiations are in progress to tie up loose ends.	Severe – failure to gain necessary land owner approvals is	Negotiations with landowners are well advanced and they are aware of the project timeline.

		Mitigation strategies are in place should negotiations fail.	essentially fatal to the project	
Dam Design in Relation to Over-topping	Low	All dams have the potential to be overtopped during an extraordinarily extreme weather event in the dam catchment.	Severe  (Although, in addition to the details provided in the column to the right, this dam is comparatively resilient if overtopping was to occur. For example, many dams in New Zealand have power houses and expensive machinery below the dam.)	<p>This dam has both a conservative freeboard designed to cope with simultaneous large waves and high water levels.</p> <p>The dam has also been designed with an open flow spillway so that neither operator intervention nor mechanical/electrical activation is required to spill water. The spillway by its very nature passes increasingly high water volumes as the reservoir level rises. This is a conservative dam design.</p>



## SECTION D: Additional information

### 14 Conflicts of interest

*Describe any known conflicts of interest (actual or potential) and steps you will take to manage them.*

There are no conflicts of interest that are not otherwise managed by the Council meeting its various statutory obligations and the Council considers it complies with its obligations under Section 39 of the Local Government Act 2002.

### Declaration

*This declaration must be completed by a person with the organisation's signing authority. See page 31 of the Guide for Applicants 2017 for additional information on how to complete this question.*

As a duly authorised representative of the organisation:

- I declare that to the best of my knowledge, the information contained in all sections of this Work Programme, or supplied by us in support of our Work Programme is complete, true and correct.
- I declare that I have the authority to sign this Work Programme and to provide this information.
- I understand that information presented to the Minister for the Environment and the Ministry for the Environment is subject to disclosure under the Official Information Act 1982.

**Name**

Dennis Bush-King

**Position**

Environment and Planning Manager

**Signature**

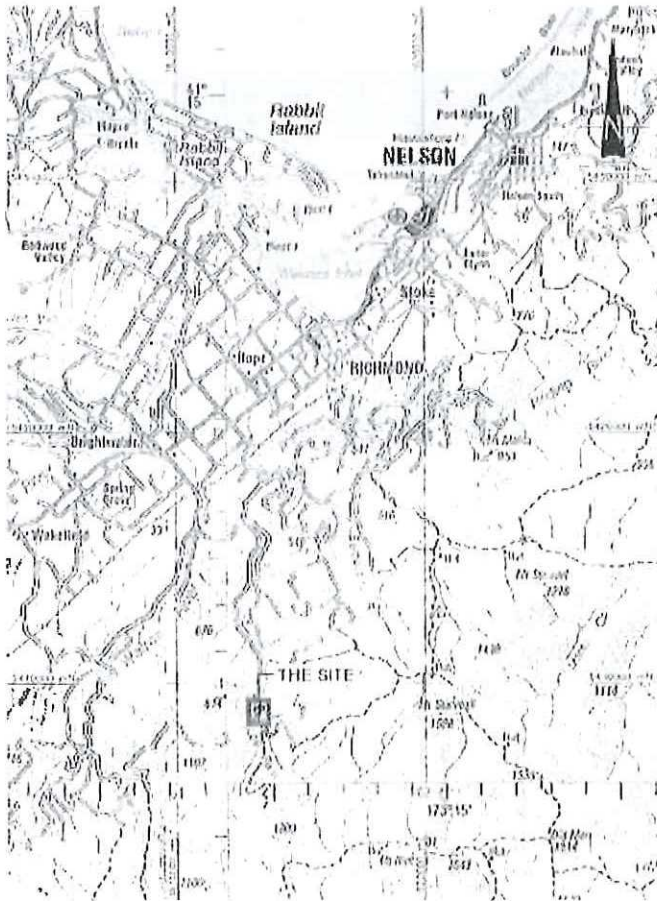
*By typing your name in the space provided you are electronically signing this Work Programme.*

*Dennis Bush-King*

**Date**

*1/7/2019*

## Appendix 1. Location of Dam



<b>EXECUTION</b>
------------------

SIGNED as a deed on: 8<sup>th</sup> August 2019

*[The date that the Deed is signed is the date at which both parties have signed the Deed i.e. the date the final party signed the Deed. This date must be handwritten on both original copies of the Deed by the party who signs the Deed last.]*

Signed and delivered as a deed by Cheryl Barnes,  
Deputy Secretary, Water and Climate Change on  
behalf of the **Ministry for the Environment**

Cheryl Barnes  
Signature

On date: 8 August 2019

In the presence of:

[Signature]  
Witness Signature

Julian Price  
Witness Name

Analyst  
Witness Occupation

23 Kate Sheppard Pl  
Witness Address

Signed and delivered as a deed on behalf of Tasman  
District Council  
in the presence of:

[Signature]  
Witness Signature

Richard John Hollie  
Witness Name

Manager  
Witness Occupation

Tasman  
Witness Address

On date: 11/8/2019

[Signature]  
Signature

JANINE WENDY DOWDING  
Print Full Name  
(For a Local Authority specify Description  
Director/Authorised Signatory)

[Signature]  
Signature

DENNIS LEANNE BURTON KING  
Print Full Name  
(For a Local Authority specify Description  
Director/ Authorised Signatory)



