
MINUTES
of the
CONFIDENTIAL EXTRAORDINARY FULL COUNCIL MEETING
held
1.15 pm, Thursday, 6 September 2018
at
Tasman Council Chamber, 189 Queen Street, Richmond

Authorised for public release by Council resolution CN18-11-18 at the 8 November 2018 Full Council Meeting.

Present: Mayor R Kempthorne, Councillors T King, S Bryant, P Canton, M Greening, K Maling, D Wensley, D McNamara, A Turley, S Brown, D Ogilvie, T Tuffnell, P Hawkes, P Sangster

In Attendance: Chief Executive (J Dowding), Executive Advisor (K Redgrove), Executive Assistant to CEO (H Simpson), Environment and Planning Manager (D Bush-King), Corporate Services Manager (M Drummond), Pat Dougherty, Chief Executive - Nelson City Council (NCC), Jonathan Salter, Partner - Simpson Grierson, John Palmer – Waimea Irrigators Limited (WIL), Murray Gribben, Richard Westbury - Crown Irrigation Investments Limited (CIIL), Principal Legal Advisor (L Clark), Community Development Manager (S Edwards), Programme Delivery Manager (R McGuigan), Online Communications Officer (B Cately), Environmental Policy Manager (B Johnson), Acting Engineering Services Manager/Activity Planning Manager (D Fletcher), Senior Resource Scientist (J Thomas)

APOLOGIES AND LEAVE OF ABSENCE

Nil.

5 CONFIDENTIAL SESSION

8.2 Waimea Community Dam

Mr Murray Gribben, Chief Executive of CIIL, confirmed that the funding proposal represented the largest investment of this type that has involved the Crown.

Mr John Palmer, of WIL, acknowledged the concerns of Councillors and confirmed the proposed investor was both reputable and sound. He went on to clarify that it was a New Zealand based investor with a substantial portfolio. Its interests were New Zealand centric.

The Corporate Services Manager confirmed advice had been received from Mr Murray Harrington, Partner - Price Waterhouse Cooper. His advice confirmed the investment company,

(party to the CPS terms sheet), and its Directors and shareholders live in New Zealand. The report also confirmed the recent negotiations and outcomes with that party were consistent with normal commercial practice.

In response to questions raised, Mr Palmer confirmed that CIIL had to alter their position and undertakings because WIL had no more scope for raising additional capital. As a result, the recent discussions and negotiations allowed WIL to return to Council with confirmation that it could meet its share of what would be assessed as its liability whilst still remaining within the limit of what had been represented to their subscribers, with there being only small variations to what had been disclosed in the Product Disclosure Statement (PDS). Mr Palmer referenced a number of similar governance issues arising from his experience with other organisations, which were comparable to the challenges that Council was currently facing.

Mr Gribben confirmed that CIIL had been working on this revised funding for some time and were essentially providing 40% of the funding for the project. He said that after Council's vote at their meeting of 28th August, it became clear to him that CIIL were the only party that could move in any way such that it might improve the position of the ratepayers in the region. Although there was no more money available, a reduction on the interest rate charged on CIIL loans will flow through to help cover costs that Council would incur on their share of the additional capital that would need to be raised. CIIL were also in a position to increase the term of the interest free environmental loan to Council from 10 years to 20 years.

Mr Gribben went on to explain that the underwriting component was necessary to manage the regulatory risk that Council must carry.

In response to a request, Mr Palmer explained the process by which WIL's preference shares would be allocated to the institutional investor. He said that if the investor wished to transfer the preference shares to another party, they would require approval from the WIL Board of Directors. The terms sheets also stipulated that the transferee would need to be an investor or person of a similar standing. This was to ensure the shares could not be traded without authority and become 'junk bonds' in the future.

Mr Palmer clarified there would be no specific bar on transferring shares to foreign investors but this was not contemplated by WIL nor is there specific intent to do so. He explained the investor was already an investor in wastewater schemes and wanted to increase their portfolio. Responding to a question, Mr Palmer said that the WIL Board had already approved the issue of 4000 shares.

The meeting sought clarity on NCC's position with their \$5M contribution and the water availability issues that they face. Mr Pat Dougherty presented apologies on behalf of Mayor Reese, who was unwell and could not attend today's meeting.

Mr Dougherty explained that NCC held enough stored water to supply all residential, commercial and industrial activity for around 60-70 years. Their Council had agreed that the proposed Waimea Community Dam was a project good for the region as a whole, not just for the Tasman District.

He said that he had worked with NCC in his capacity as a water engineer some years ago and his role then was to look at alternatives available for the supply of water. As a consequence of the investigations by staff, NCC spent a large amount of money building the Maitai Dam.

In response to a question about NCC's water availability, he confirmed NCC could provide an additional 5000 cubic metres of water a day to Richmond. In time, possibly 15 years from now, they would have to look at phasing that supply out to reduce drought vulnerability for Nelson City. If as a result of the Dam not proceeding and growth rates in Nelson City increased, it

could be as soon as 5-7 years that Nelson would be unable to supply water to Tasman. For any water supply from Nelson, they would need to upgrade reticulation to avoid pressure drops across the network and they would be expecting Tasman District Council to fund most of the cost of that work and no refund would be given when the supply was terminated. An estimate for this work was given to be \$20-25m. Mr Dougherty also said that Council could have a high level of comfort around the certainty of the \$5m contribution from Nelson City Council, following a yes vote at this meeting.

Mr Dougherty made it clear to Councillors that if there was a drought that Nelson City restrictions would apply to the Tasman District water supply, which is a staged trigger restriction applying at 5 year, 10 year and 30 year drought increments. He also said that in the event of a severe drought Nelson City Council would recall the water supply to Richmond for their own residents who were their priority. He warned that if the proposed Waimea Community Dam did not proceed, residential growth rates in the Tasman District will drop and NCC would have to remodel their growth rates. That would again be a likely factor in reducing the length of time NCC could continue to supply the extra water to Tasman. That could be as short as seven years.

The Environment and Planning Manager confirmed that the proposed Waimea Community Dam would provide enough water to service the demand projected into the future for both irrigators and urban supply. In the event of a severe drought (one in 60 year) restrictions may apply but the dam would enable these to be issued in a staged approach. In response to a question, he confirmed that WIL would not have any influence over who signed up to the reticulated water network.

The meeting turned their focus to the new proposed financial model. The Mayor anticipated a small grant from the Provincial Growth Fund (PGF). Indications were that this would be a few \$Million.

Mr Palmer confirmed that the terms reached with the investor stated that it was mandatory for preference shares to be converted to water shares and that it was almost certain the investor would determine the price of the shares in the market. Any investor would have to be satisfied that the value of water would be sufficient to generate the return they were expecting.

Mr Gribben explained to the meeting that the original purpose of CIIL was to underpin the economic benefits of water storage and distribution. The focus was on the economic benefit for industrial and agricultural operations. Initially there was hydro-electric component in the Waimea Dam proposal considerations and then this was removed, but from CIILs point of view, this did not represent a significant component to what is proposed and they were not opposed to its inclusion in the project.

The meeting agreed it was important to thank CIIL for their support for the project but there were still concerns expressed that the ratepayer may be burdened by cost overruns.

The expectation of funds from the PGF was discussed. Mr Gribben commented that any money from this fund would be allocated to assets and that from his conversation with Ministers it was clear they considered CIIL's contribution of 40% to the project already represented a significant contribution from Central Government. This is why Council can expect only a small proportion, if any, of the amount they have applied for from the PGF.

Mr Palmer spoke about credit risk. He said that the mandatory conversion of the CPS to water shares would release 2000 shares that would become fee payers to WIL, producing an automatic monetary injection annually with a change in WIL's revenue line but no change in WIL's costs. Responding to a question, Mr Palmer confirmed that WIL cannot supply water to

industrial users currently connected to Council's water supply and said that Nelson Pine Industries Ltd could not use shares to supply the plant.

The meeting broke for afternoon tea at 3.38pm and was resumed at 3.52pm. Mr Salter was the only external party remaining in attendance when the meeting resumed.

The Corporate Services Manager was asked to explain the impacts of the revised model to Councillors. He said that the term of the \$10m environmental loan was extended from 10 years to 20 years, which would see an increased saving in interest costs (\$3m to \$5m). The increased term would offset the annual rates impact due to lower repayments. He also advised that WIL have confirmed they will be able to meet the commitments in the term sheets to cover 50% of cost overruns up to the first \$3m. Mr Drummond said that it would be preferable to proceed with the Dam without industrial investors, since there was no provision for such a shareholding in the CCO. Such investors would likely want lower council water charges and would also need an exit strategy from the investment.

The Corporate Services Manager also said that there was now a fixed price on a number of significant components of the Dam, which he said reduced the need for large overrun contingencies. He advised that inclusion of the hydroelectric option would be a Council led project and would need to be Council resourced and funded.

The Corporate Services Manager spoke to Table 1 Proposed Funding contained in the report. He noted that for the purposes of the table costs had been shown as a 50/50 split between Council and WIL, but that the actual split would be 51% Council and 49% WIL. He said that WIL would continue to service the loan in the CCO. He also said that Council's share of the increased cost would be allocated across the water account and the environmental public good flow, and that this would enable rates to be kept at the levels contained in the 2017 consultation document, with a small increase in water rates.

Councillors noted that there would be an increase to the water account and the Corporate Services Manager explained that due to the size of the account and the spread of costs, this increase would work out at \$25 per year (or 50c per week) for the typical residential ratepayer.

Speaking to the numbers contained in Table 2 Typical Rates (Inc GST) of the report compared against those in the 28 August 2018 report, the Corporate Services Manager explained that the sample properties remained the same as did the typical residential usage, but that the property values had been updated to reflect the recent District wide property revaluations.

Councillors asked about the savings from the extension of the \$10m loan and how these would be used. The Corporate Services Manager said that as the term was extended to twice the length, it halved the amount Council would have to set aside to repay the loan each year. The funds not used to repay the loan would be used instead to offset the burden on ratepayers. In response to a question about managing forestry income, the Corporate Services Manager referred to the presentation given at the Commercial Committee meeting on 31 August 2018. He said that there were sufficient funds flowing through forestry income to meet principle payments on the Dam loan. Responding to a follow up question about future income from Council's forestry portfolio, he said that it was close to peak for this forestry rotation. The harvesting programme and new planting this time round was designed to help smooth the income from forestry and that Council will continue to get an income from forestry in the future.

Councillors commented that it was only recently that there was a properly tendered process through the ECI. Some Councillors noted that they did not view the higher cost as an overrun, but rather as confirmation of a revised estimate.

Councillors discussed whether it was necessary to remain in committee for the balance of

debate. The Mayor advised that it was appropriate for debate to continue in committee due to the commercial sensitivity around some of the information being or likely to be discussed. He noted that Council would agree what information could be made publically available once it had reached a decision on the matter before it.

The level of contingency included in the \$102m budget was discussed. Councillors were advised that the \$3m provision shared with WIL was on top of the \$102m and extensive contingencies already in place for the items that did not have a fixed price agreed. They noted the level of certainty and comfort that could be taken from the contingencies and the number of items that had a fixed price.

The Acting Engineering Services Manager advised that the fixed prices agreed through the ECI process to date totalled \$71.5m of the \$102m overall estimated cost. He said that these prices had been fixed with the contractors, which meant that they bore the risk. The cost overrun risk to the Joint Venture partners, including Council, for fixed price items was zero.

He said of the \$22m of costs without a fixed price attached, there was an additional contingency in case of cost overrun of \$8.5m. He also said that by financial close it was expected that an additional \$5.6m in costs of that \$22m would be fixed. Summarising for Councillors, the Acting Engineering Services Manager said that meant an expected \$77m would be fixed with the risk of any overrun being solely with the contractors. Of the \$16.5m of cost that would not be fixed, only \$3-4m related to Dam construction (the rest is for design/consultancy or similar). At financial close, the contingency of \$8.5m would be equivalent to about 50% of the expected cost estimate for the variable cost items.

To put this in to context, he advised that the recent Queen Street upgrade which had a budget of around \$14m didn't haven't anything like this level of contingency. Responding to a question, the Corporate Services Manager said that he did not expect the Dam project to cause Council's borrowing to exceed it's \$200m limit. He said that Council can accommodate the additional \$11m within the \$200m cap by the normal management of capital works programmes. This year Council will be carrying forward \$17-\$20m of projects. The carry forward of projects and budgets is typical across all of local government and public sector organisations.

Council's ability to maintain overall rates income increases at a maximum of 3% was discussed. The Corporate Services Manager advised that because the capital works programme runs behind, Council inevitably overrates. Staying within the debt limit cap will mean that Council can meet and stay within the 3% rates income cap.

Councillors asked who would be responsible for the cost of delays should Council be challenged on the process in court. The Environment and Planning Manager responded by advising that judicial review does not stop Council from continuing with its process.

Councillors asked whether the names of forestry owners who had indicated they were happy for mulch to be left on their properties were available, and were advised that staff did not have these.

Councillors asked whether the risk of not finding bedrock at the Dam site would be born by Council or the contractors. Staff advised that there had been reasonable excavation of the valley and that geologists were familiar with the site, but that there was a \$6.5m provision for contingency should they need to dig further or put rods into the rock. That \$6.5m was contingency over the expected cost for this work.

The Mayor offered Councillors the opportunity to express their final thoughts before voting. Councillors comments around the table are summarised as follows:

There was concern about cost overruns. There was an acknowledgment that whatever the outcome of the decision, there will be some in the community who will be unhappy. An opinion was offered that it would be nice for Councillors to have commitment from Central Government for support with additional cost overruns. There was also concern about the impact on Councils ability to progress other capital projects in the originally planned timeframes.

Concern was raised about bedrock not yet having been found at the site. An opinion was given about the seismic risk, noting the GNS predication that a substantial earthquake is due to occur within next 30-50 years, with no way to mitigate that risk. Apprehension was expressed about the environmental effect of pollution on the river from detritus. A belief that the governance and financial issues of concern had not been addressed was also put forward.

The input from the Crown at this meeting was a huge step from CIIL and WIL for the project. It was acknowledged that Council had also heard more today from the community about the impacts of not proceeding with the Dam. An opinion was put forward that these impacts and opinions had not been heard so strongly in the beginning and that Councillors may not have been unaware until now of the consequences to those who have to live with the outcome. The rarity of Government making an improved offer was noted as something not to be declined lightly.

Councillor Greening foreshadowed a motion as follows:

That the Full Council instructs Councillors Wensley, McNamara, and Sangster, to meet with WIL, industrial and commercial users, and the Crown, to negotiate a revised funding model and report back any progress.

An opinion was offered that more proactive negotiations should be made and that the risks had not gone away and under the revised model, but that the irrigators were now even more stretched. It was believed that a number of irrigators had not subscribed, which was taken to mean they had assessed and were not prepared to accept the risk. Reference was made to supporters of the Dam who sought a user based approach to funding. Council should bring water use to a sustainable level for everyone. The risks of not finding bedrock were raised, as was concern over the risk to Council should the contractor collapse. The construction market is a risk and there remain a lot of unknowns. The opinion was expressed that there was no appetite for the level of risk with the currently proposed funding model. The proposed deal is still incomplete and has not addressed all concerns, because it is not looking at a user based model. There was the opinion given that the Dam had been under designed and under costed. A deal might be salvagable for the Dam, but not the one before Council at this meeting.

The period over which consideration had been given to augmentation projects in the region was reflected on and it was noted that Nelson City Council had looked at a possible augmentation project over 40 years ago. There had been pressure on the Nelson City Council at the time, but where would they be had they not proceeded with their dam. If Council does not proceed, it will lose \$63m of funding that it did not have to pay back. The risk was acknowledged, but it was said that there will always be risk with any project. The plan Bs have other risks and other issues to consider and the best plan B is still contestable. Council must consider and add the Waimea Dam sunk costs to the plan B costs.

It was said that doing nothing is not an option. Council know there are water shortages, both urban and rural. Funding has always been key to the difficulty of the Dam project. CIIL have been prepared to do more to help get this project over the line. The best plan B is far more expensive than the Dam model. There are risks, but Council has listened to extensive analysis and should be comforted by the thoroughness of the process and that the level of risk has been dealt with appropriately.

A comment was made that Council had rolled the dice at its 28 August meeting and effectively won as a revised offer had been made. It is unlikely that this will happen a second time should Council choose to gamble again. The economic benefit was discussed and a parallel was made to the RIF broadband initiative with the comment that it was the backing from the Crown that enabled the project to be economic. Until financial close is achieved, there is still time to make another decision.

Council's frustrations were noted over politicisation of the project, but it was acknowledged that Council would not know the outcome of its request for additional funding from the Provincial Growth Fund unless they took the next step to continue with the project. It was also noted that WIL did not have an endless time to play the market on shares. There are risks, but these have been well canvassed. There is a fixed price on \$71m of costs. Council will have another say on whether to proceed with the Dam at financial close. The risks on the other side (a decision not to proceed) have been dismissed. There is no process on alternatives, this is completely unknown. Council may not even get consent for any of the alternative options. There are risks of Environment Court proceedings and increasing minimum flow risks. It was said that the risks on the other side were at least as significant and even more unknown. At least the risks of the Dam project are known and there have been some prices attached to them. Everything that has happened since the 28 August meeting should make Councillors more supportive of the Dam project.

The supply of water to Nelson City was discussed in light of the claim by Nelson City Council that it had a secure supply for 50 years. The opinion was offered that if this was the case, Council should keep the water it supplied to Nelson if it could alleviate the water issues in Tasman. The costs of the Dam won't be known until it had been built. It was questioned why Nelson City Council are not sharing the costs equally as neighbours with shared pipelines.

The opinion was also offered that it might be time to spread industry from the Waimea Plains across the region more equitably. Council should not be afraid to gamble and should take the risk of shaking the cage again by asking Government for more money.

A concern was stated that irrigators were on the Board when Councillors were not. It was also suggested that if the price is fixed, there should be no reason irrigators wouldn't back Council and split the cost overruns. It was also said that decommissioning costs should be included in the term sheets. The opinion was put forward that it is only irrigators who need water to extend their season and that there should be provisions to reduce irrigator take before any restrictions on urban users.

The volume of material and information on the Dam put before Council in the last few months was noted, as was the volume of correspondence Councillors were receiving from the community. One Councillor asked for it to be noted that they were angered by comments about back room deals having been made. Councillors are their own individual people and must make up their own mind. This is a decision that is taken very seriously.

It was said that feedback from the community suggested this had not been a clearly communicated process. It was commented that the health of the river was protected under the Tasman Resource Management Plan and that the benefits were achieved by default through that plan. The notion of a secret investor was alarming in that it was effectively privatising water. The fairness of the deal with WIL was questioned, with a comment that WIL had been relieved of the burden for their one third share towards the environmental component. Under a no Dam scenario, irrigators would adapt. Council can not support the privatisation of water.

A comment was made around the intention of those holding WIL shares, which it was said was

for them to be bought and sold, not given away. A reflection was made on the responsibilities of Council and it was said that Council should not be willing to vote on something that would see businesses in the district struggle. Investment from other parties, including Nelson City Council, demonstrated the need for the Dam and support for the project. Council have the support of Government. Building a Dam is far less risk than not building it.

Other successful schemes of a similar nature were mentioned, that had been opposed and now benefitted their communities. It was said that Council had to manage expenditure as best it could and that doing nothing did not solve the ultimate problem facing the community. Council need to be forward thinking and show forward vision for the benefit of the community. There are agricultural, urban, industry, horticultural and environmental benefits to be gained by proceeding and these benefits are recognised nationally throughout the Country. Councillors were urged to think about the long term benefits for their children and grandchildren and for the whole community and were urged vote for the future of the whole community.

Having moved the resolution, in his right of reply, Councillor Tuffnell said that there was not much more to add. He said that a lot of the street talk was positive and in favour of the Dam being built. He asked, when Government were prepared to invest the amount of money they were proposing to fund towards the project, how the Council could reasonably let that go.

Having been moved and seconded, the following motion was put:

**Moved Cr Tuffnell/Cr Bryant
CN18-09-3**

That the Full Council:

1. receives the Waimea Community Dam report RCN18-09-02; and
2. revokes resolution CN18-08-26 made at the Full Council meeting on 28 August 2018; and
3. re-confirms its decision of 27 July 2017 (CN17-07-20) that the proposed Waimea Community Dam in the Lee Valley is the best solution for meeting the community's need for good quality, local water supply infrastructure; and
4. agrees, that for financial modelling and Joint Venture negotiations purposes, that Council's share (51%) of the \$23 million(m) projected capital cost increases in the proposed Waimea Community Dam Project will be funded by:
 - a. borrowing through the Local Government Funding Agency of approximately \$11.5m and back to back on-lending of \$5.75 m to the proposed Council Controlled Organisation (CCO), with the CCO finance for the costs for that \$5.75m being met by a CCO finance charge to Waimea Irrigators Limited (WIL); and
 - b. accepting an increase in the term from 10 years to 20 years for the zero interest rate \$10m Crown Irrigation Investments Limited (CIIL) Environmental Loan with four equal \$2.5m repayments at five yearly intervals; and
 - c. utilising approximately \$150,000 per annum of the money saved by the reduced repayments on the CIIL Environmental Loan, to service finance costs in relation to the environmental and public benefit Council loans.
5. instructs staff to progress negotiations and work streams through to a final agreement for Council approval as part of the project financial close in late November 2018; and

6. notes that the reason for reviewing the Council’s funding position is the offer of additional financial support by Waimea Irrigators Limited and Crown Irrigation Investments Limited;
7. agrees that the reasons for supporting the Dam include:
 - the broad range of benefits offered by the proposed Waimea Community Dam compared to the alternatives, including addressing Council’s water management obligations under the Resource Management Act; the National Policy Statement on Freshwater Management; and the National Policy Statement on Urban Development Capacity;
 - the costs, lower level of benefits, risks and uncertainty associated with the alternatives; and
 - the obligation to provide good quality infrastructure that is most cost effective for households and businesses; and
8. notes that Waimea Irrigators Limited and Crown Irrigation Investments Limited have reviewed their position and funding in order to directly address concerns raised by Council and to facilitate reaching financial close and that all parties to the Joint Venture will make their final decision at that time; and
9. agrees to report the above resolutions into the open meeting and to release the revised Table 1 (Proposed Funding), Table 2 (Typical Rates including GST) and the content of paragraphs 1.2.1 to 1.2.4 of the Executive Summary from the report.

Cr Greening called for a division.

Brown	For
Bryant	For
Canton	Against
Greening	Against
Hawkes	For
Kempthorne	For
King	For
Maling	For
McNamara	Against
Ogilvie	For
Sangster	Against
Tuffnell	For
Turley	Against
Wensley	For

With 9 FOR and 5 AGAINST the motion was CARRIED

The Mayor thanked Councillors for the meeting today and for the way in which they conducted their questioning of external speakers. He also noted his thanks to those who had been present to speak to Council and answer questions.

RESUMPTION OF OPEN SESSION

**Moved Cr Tuffnell/Cr Hawkes
CN18-09-4**

That the open meeting be resumed.

CARRIED

The meeting resumed in open session at 5.07pm and was concluded.

Date Confirmed:

Chair:

Confirmed