

**9.2 WAIMEA WATER AUGMENTATION SCHEME - LOCAL BILL - CONFIDENTIAL****Decision Required**

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| <b>Report To:</b>     | Full Council                                       |
| <b>Meeting Date:</b>  | 28 June 2018                                       |
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| <b>Report Number:</b> | RCN 18-06-14                                       |

This report is confidential in accordance with the Local Government Official Information and Meetings Act 1987 (s7(2)(c)(ii) (s7(2)(i)) - The withholding of the information is necessary to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to damage the public interest; AND The withholding of the information is necessary to enable the local authority to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).

**1 Summary**

- 1.1 The Council agreed at its last meeting to prepare a Local Bill. This follows the Department of Conservation's (DOC) advice that they do not support use of the Public Works Act to transfer the land in the Mt Richmond Forest Park that is required for the Waimea Water Augmentation Scheme.
- 1.2 A draft Bill has been prepared and preliminary discussions commenced with iwi and funding partners. The objects of the Bill are to enable the inundation of the DOC land while ownership remains with the Crown. If the Scheme does not proceed to construction, the Bill will not have any effect; and if it ceases to have the required consents, the inundation must cease.
- 1.3 Public notice of intent to introduce a Bill is required and following introduction of the Bill, the public will have the right to make submissions, appear before a Parliamentary Select Committee, and speak to any submissions lodged.
- 1.4 This report recommends that the Council agree to the lodgment of a Draft Bill with the expectation it will be introduced into Parliament during the week commencing 13 August 2018.

**2 Draft Resolution****That the Full Council**

1. **receives the Waimea Water Augmentation Scheme – Local Bill Report RCN18-06-14; and**

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- 2. approves the introduction of a Local Bill consistent with Attachment 2 to Report RCN 18-06-xx to enable the use of the 9.6ha of Mount Richmond Forest Park land for the Waimea Water Augmentation Scheme; and**
- 3. authorises the Chief Executive to undertake all such actions as are appropriate and necessary to support the introduction and passage of the Bill, including (without limitation) the approval of any drafting changes recommended by Parliamentary Counsel, the publication of notices, advice letters to MPs, affected Departments and directly affected parties, provision of relevant certificates and declarations, other administrative requirements, and all reasonable assistance to the Clerk of the House associated with the introduction and passage of the Bill; and**
- 4. notes the Hon Dr Nick Smith has accepted the invitation to introduce the Bill as is the standard practice for the Local Electorate MP.**

**WAIMEA WATER AUGMENTATION SCHEME - LOCAL BILL****3 Purpose of the Report**

- 3.1 This report seeks Council's approval to lodge a Local Bill with the Clerk of the House so that measures can be put in place to obtain access to inundate Department of Conservation land in the Mt Richmond Forest Park required if the Waimea Water Augmentation Scheme proceeds to construction.

**4 Background and Discussion**

- 4.1 At the 24 May 2018 meeting Council was informed that the Department of Conservation (DOC) does not consider that the mechanism proposed for transferring the 9.6 ha of Mount Richmond Forest Park land for the Waimea Water Augmentation Scheme is available to us i.e. a transfer under s50 and s20 of the Public Works Act, despite earlier advice and understandings. DOC also does not consider it feasible to create a local purpose reserve to be administered by the Council under the Reserves Act 1977. Their position is that there is no acquisition pathway available to us because of the unusual status of the land (it is in transition status under the Conservation Act) and one of the options to resolve this impasse is a Local Bill.
- 4.2 At the same meeting the Council received advice as to why the DOC land is essential if there is to be a dam to augment water in the Waimea River and that is not repeated here. DOC understand this and a \$2M conservation compensation package for the Scheme has been agreed to as part of the resource consents for the project. However a plan has been prepared as Attachment 1 showing the location and layout of the land affected.
- 4.3 The Council agreed to pursue this option of a Local Bill and resolved
- CN18-05-6**
- That the Full Council**
1. ...
  2. **approves the Chief Executive instructing Simpson Grierson to draft a Local Bill to enable the use of the 9.6ha of Mount Richmond Forest Park land for the Waimea Water Augmentation Scheme; and**
  3. **requests a report back on the proposed wording of the draft Local Bill and on the process and timetable for progressing it, for consideration at the Full Council meeting on 28 June 2018; and**
  4. **authorises any necessary engagement, ahead of the report back, with Iwi, the Clerk of the House, Parliamentary Counsel, local Members of Parliament and Ministers of the Crown, as well and the Department of Conservation, Land Information NZ and any other directly affected government departments so that Council is fully informed.**
- 4.4 A draft Bill, the Tasman District Council (Inundation Easement) Bill, has been prepared and is attached as Attachment 1.

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- 4.5 The objects of the Bill are to confer on the Council an inundation easement and the power to transfer the easement to a council-controlled organisation (CCO) controlled wholly or partly by the Council. The easement will enable the Council (or CCO) the right to inundate 9.6ha of the conservation estate so the Waimea Water Augmentation Scheme can proceed. To the extent that the land is not inundated at any time, the public will have the same level of access as it does to the adjoining conservation estate which is physically indistinguishable.
- 4.6 The objects of the Bill cannot be attained other than by legislation because of DOC's position (as set out above).
- 4.7 Simpson Grierson, on our behalf, have liaised with the Clerk of the House, Parliamentary Counsel, Land Information New Zealand (LINZ) and DOC and agreement has been reached on the content of the draft Bill. There is an associated matter concerning LINZ and the footprint of the dam face over the Crown river bed which is being discussed and may result in a small amendment to the Bill if necessary.
- 4.8 Staff have also discussed the draft Bill with Ngati Koata, and provided copies to other iwi, Nelson City Council, Crown Irrigation Investments Limited (CIIL), and Waimea Irrigators Limited (WIL) with an invitation to provide feedback before the Council meeting, or to request a meeting to discuss the draft prior to the same date. At the time of writing Ngati Koata, Ngati Tama, Te Atiawa, CIIL and WIL had confirmed they were happy with the Bill. Any other feedback received from others by the meeting will reported to Council.
- 4.9 The Bill has been drafted for introduction by Hon. Dr Nick Smith as the Local Electorate MP in whose electorate the matter falls and he is also the "member for the area in which the promoter has its offices" (D McGee, Parliamentary Practice in New Zealand, 2017). This follows normal Parliamentary convention.
- 4.10 The expected process following a Council decision to mandate lodgment is as follows:
- 4.10.1 Final drafting in consultation with Parliamentary Counsel Office to be completed. The Chief Executive will be required make certain declarations, including that the objects of the Bill cannot be achieved other than by legislation, and filing other ancillary documents with the Clerk of the House;
- 4.10.2 The Bill requires public notification and that is expected to commence 4 July 2018. The Council will be responsible for notification of MPs and other parties;
- 4.10.3 Introduction of the Bill is targeted for the week of 13 August 2018. Council will be required to assist with preparing the Introductory Speech and may be required to provide briefings as required.
- 4.10.4 Following introduction, the Bill will be referred to a Select Committee and although the Council would have no direct power over any amendments, it is usual for the promoting Council to be consulted. We will be able to make an initial briefing (if we wish) and a submission to the Select Committee; and are expected to assist with any other advice.
- 4.11 The content of the Bill has been kept short and strictly to the matter in hand – that is, access to the DOC land. The Survey Office Plan which will be referred to in the Inundation Easement

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is lodged with LINZ for final approval. The Inundation Easement which allows for the dam reservoir to flood the DOC land has been chosen as the best means by which to access the DOC land, while ownership remains with DOC. This is not considered to have any negative consequences for the construction or operation of the Dam. A similar arrangement is being negotiated with Ngati Koata in respect of their land.

**5 Options**

- 5.1 When DOC advised us of their position, they suggested we could challenge their understanding of the law by declaratory procedures in the High Court or by promoting local legislation. The Local Bill was considered to be the better option because of certainty and timing of outcome. We have also explored whether the land could be declared to be local purpose reserve with control vested in the Council or whether the Bill could vest the land in the Council outright. Neither of these options were considered feasible by DOC so a Bill establishing the Inundation Easement is the preferred option.
- 5.2 A decision not to support the Local Bill option will mean the project will not be able to access the DOC land. The augmentation dam would be uneconomic at the lower levels that would apply if the inundation right was not there. This will mean the project cannot proceed to financial close. This would mean the renewal of the water permits for the Waimea Water Management Zone, which have currently expired, will be processed immediately under the “without dam” provisions of the Tasman Resource Management Plan.

**6 Strategy and Risks**

- 6.1 Advancing a Local Bill does not come without some risk. The fact that a Local Bill is available may reopen debate on wider issues involving the Scheme, and highlight some wider post-Ruataniwha decision issues for the Crown. However the best approach for the Council is to pursue the Local Bill.
- 6.2 The outcome will be in the hands of Parliament and submissions may draw out the process. With date stamps in the TRMP and a Government commitment to funding set currently at 15 December 2018, there is a need to demonstrate progress if we are to achieve financial close within reasonable timeframes assuming the ECI process comes up with a reasonable construction cost. The standard timetable for the Bill will not see it passed this year, but the further it can get through the Parliamentary process, the better.
- 6.3 Delaying a decision on lodging the Bill, pending completion of the ECI process, will cause unreasonable delay further downstream. So the process needs to continue contemporaneously.
- 6.4 Progress also needs to be made to demonstrate to our project partners that the Council will not be responsible for unilaterally withdrawing from the project. To do so at this stage would have adverse reputational consequences.

**7 Policy / Legal Requirements / Plan**

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- 7.1 The drafting of the Bill has been undertaken by Simpson Grierson/Parliamentary Counsel Office and follows the requirements of Standing Orders of the House of Representatives.
- 7.2 There has been liaison with the Clerk's Office about the Standing Orders requirements for introducing local Bills.

**8 Consideration of Financial or Budgetary Implications**

- 8.1 There is no cost in lodging a Local Bill in Parliament but there will be time costs involved in staff servicing the process. There are some costs in giving the required public notices for the Bill and lodging SO Plans. There will also be legal costs involved post-introduction but that is hard to determine quantum until we know what issues emerge. Such costs will be a specified project cost within the Land and Access component of the budget.

**9 Significance and Engagement**

- 9.1 The Waimea Water Augmentation Scheme is a significant project for the Council. There is a high level of public interest and contest. However the decision to proceed with a Local Bill is of low to moderate significance and is simply the best means now available to give Council access to inundate DOC land if the Waimea Water Augmentation Scheme is to proceed through all its phases.
- 9.2 It is not necessary to consult on whether to lodge a Local Bill as the public have been extensively consulted over the wider Scheme over the years and the Bill merely implements a small part of it. There will be public notice of the intention to introduce the Bill, and the Select Committee will give notice of a fair and independent opportunity to make submissions on the Bill. Targeted consultation with some parties prior to introduction is required under Standing Orders of the House of Representatives and this obligation will have been complied with. Ngati Koata have been consulted, and agree the Bill is an appropriate means to secure the DOC land.

**10 Conclusion**

- 10.1 Access to DOC land is critical if the Waimea Water Augmentation Scheme is to ever come to fruition. A Local Bill is the only feasible way to ensure that is possible given the position DOC has taken in respect of the previously agreed use of the Public Works Act..

**11 Next Steps / Timeline**

- 11.1 As described in paragraph 4.7 of this report.

**12 Attachments**

1. Attachment 1 - Dam Land Layout Plan
2. Attachment 2 - Draft Local Bill

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