

DATE: 19 June 2018

TO: 1. Luke van Velthooven
2. Kevin Loe

By email

FROM: Peter Radich

RE: **FLAXBOURNE**

Dear Luke and Kevin,

1. As you know we have been working with you, Martin Fletcher and others from Council over a number of months to prepare legal documentation to advance the proposed Flaxbourne Irrigation Scheme. We have now reached a point where the documentation is settled as a proposed final draft and is ready to be provided to intended participants in the Scheme. In advance of the meeting you have with the intended participants, you have asked us to summarise the documentation we and you have prepared, which we now do.
2. In broad terms, the documentation has been prepared using the core documents from the Southern Valleys Irrigation Scheme (SVIS). SVIS, like the proposed Flaxbourne Scheme, will be constructed, operated and owned by Council with Council's costs being recovered over time by a combination of rates and charges. The documentation is for purposes of securing binding commitments from landowners to:
 - (a) Commit land to the Scheme.
 - (b) Agree to the Standard Terms and Conditions of Supply, including agree to the broad proposals for rating and charges.
 - (c) Agree to provide access rights for pipelines and infrastructure.
3. All of these initial legal commitments are currently within one document, with various Schedules. The document is a Heads of Agreement (HOA) which is proposed to be entered into by each landowner and Council and which commits the landowner to taking and paying for a minimum volume of water, based on the base number of hectares which are intended to be irrigated. The only contingency in terms of the status of the landowner's commitments is if the Scheme does not go ahead. If the Scheme does go ahead, the landowner upon signing the HOA is committed in terms of the HOA and the agreements which are set out in its Schedules.
4. The HOA has four Schedules, which record additional legal commitments which are made by the landowner at the time of execution of the HOA.
5. Schedule 1 of the HOA records the agreement of the landowner to commit a minimum number of hectares to the Scheme.

MJR-022096-1024-16-V1

21 Bells Road, RD2, Blenheim 7272. PO Box 842, Blenheim 7240, Marlborough, New Zealand.
T: +64 3 577 8450 F: +64 3 577 8451 E: info@radichlaw.co.nz W: www.radichlaw.co.nz

6. Schedule 2 of the HOA records the agreement of the landowner to the proposed costs of the Scheme, including the capital costs, the consumption costs and the landowner's responsibility for the costs of investigation and development of the Scheme.
7. Schedule 3 of the HOA records the agreement of the landowner to participate in the Scheme on the standard terms and conditions which are recorded in Schedule 3. It is important that each landowner understands that these terms are intended to be binding on them from the time Scheme is operational and there is not intended to be a further avenue for negotiation of the standard terms and conditions in the future. These terms and conditions have been developed using the SVIS model, with such amendments as are appropriate for the Flaxbourne Scheme.
8. Schedule 4 records the terms and conditions of the easement for access and pipelines which Council will need to ensure that it can operate and maintain the Scheme in the future. Again, it is important to note that the landowner is committing to grant access to Council on the terms set out in the easement on terms which are not intended to be the subject of further negotiation.
9. We are anticipating the landowners will, at this stage, take their own advice, including legal advice, as to the contents of the proposed suite of documents and that any changes which are to be proposed will be raised and considered now and not at later stages in the process so that there is uniformity in the contractual arrangements to which landowners are subject.
10. Thank you both and all the best for the next stage.

Yours sincerely



Miriam Radich

Email address: miriam@radichlaw.co.nz