



Waitaki

DISTRICT COUNCIL

TE KAUNIHERA Ā ROHE O WAITAKI

Date: Tuesday, 30 May 2023
Time: 9.00am
Location: Council Chamber, Third Floor
Office of the Waitaki District Council
20 Thames Street, Oamaru

Agenda Addendum

(urgent additional report for Agenda Item 5.1)

Council Meeting

30 May 2023

Alex Parmley
Chief Executive

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L URGENT BUSINESS

5.1 MAHENO WATER SUPPLY AGREEMENT - DRAFT LEGAL DOCUMENT

Author: Ainslee Hooper, Governance and Policy Advisor

Authoriser: Paul Hope, Finance and Corporate Development Group Manager

Attachments: 1. **Draft Legal Agreement between Waitaki District Council and the Maheno Water Committee to transfer the Maheno Water Supply over to Council (as at 2.00pm, Friday 26 May 2023)**

RECOMMENDATION

That Council:

1. Receives, for consideration under Agenda Item 5.1 at this 30 May 2023 Council Meeting, the attached draft legal agreement between Council and the Maheno Water Committee in its current unfinished form as at 2.00pm on Friday 26 May 2023; and
2. Notes the explanatory comments relating to the draft legal agreement contained in this Agenda Addendum report to the meeting.

PURPOSE

To provide the draft legal agreement between Council and the Maheno Water Committee, in its current unfinished form as at 2.00pm on Friday 26 May 2023, for consideration by Council under Agenda Item 5.1 to this meeting.

SUMMARY

The attached draft legal agreement has been developed by Anderson Lloyd and reviewed by officers, the MWC and Dean and Coleman.

There are some sections in the draft legal agreement which are still being finalised. The sections mainly relate to the payment of development contributions, and an easement on land which has MWC reservoirs located on it.

These sections are in red font in the attached draft legal agreement.

We are expecting these sections to be finalised prior to the meeting and will distribute the final legal agreement if this occurs. Otherwise, officers will provide an update at the meeting.

Draft agreement (as at 26 May 2023, 2.00pm)

Agreement to transfer Water Supply

Waitaki District Council

Maheno Water Committee Incorporated

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Date:

Parties

- (1) Waitaki District Council (**Council**)
- (2) Maheno Water Committee Incorporated (**MWC**)

Background

- A. MWS is a registered community drinking-water supply owned and operated by MWC. The MWS serves a population of 127 people. The supply comprises approximately 5 kilometres of small to medium bore pipework, approximately 80 service connections, a river intake, treatment plant, and service reservoirs.
- B. MWC holds a Water Permit from the Otago Regional Council for the taking of surface water from the Kakanui River (2006.006.V1).
- C. The parties wish to enter into this Agreement to:
 - a. record the terms and conditions of the transfer of the MWS from MWC to Council; and
 - b. document the grant of the Easement to Council by MWC over MWC's Land.

Agreement

1. Definitions

1.1 In this Agreement unless the context otherwise requires:

Agreement	means this Agreement.
Application	means a service application by current MWS consumers to connect to the Council water supply.
Consideration	means \$1.00 (plus GST if any).
Easement	means the right to convey water and the right to store and pump water over MWC's Land.
Easement Area	means the area of the MWC's Land over which the right to convey water and the right to store and pump water is granted, as shown on the Plan.
Easement Facility	has the meaning given for a right to convey water as defined in Schedule 5 of the Land Transfer Regulations 2018 and includes the MWS.
MWC	means the Maheno Water Committee Incorporated (incorporation number 226627) and includes its successors and assigns.
MWC's Land	means MWC's land legally described as Part Section 87 Block VI Otepopo Survey District and as contained in Record of Title OT2C/211.
MWS	means the Maheno Water Supply, being a water supply administered and operated by MWC, and includes:

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- (a) the Maheno Water Treatment Plant;
- (b) reticulation, including but not limited to, pipework, valves, and service connections;
- (c) the Water Permit (as defined in this clause 1.1);
- (d) all other infrastructure and plant used to take, treat, transfer, and store water taken under the Water Permit; and
- (e) all records and documentation, including but not limited to, customer records, stakeholder records, location and structural plans, and process documentation,

For the avoidance of doubt the MWS excludes MWC's Land.

Plan means the plan showing the location of the MWS, including the pump house, pipework, treatment plant, and service reservoirs attached as Schedule 1 to this Agreement.

Settlement Date is as defined in clause 4.

Tanks means the tanks (or any part thereof) located on MWC's Land and being part of the MWS, including any pipework, valves, and service connections and all other infrastructure and plant used to convey and store water.

Water Accounts means payments due to or from MWC.

Water Permit means the resource consent granted by Otago Regional Council and dated 13 February 2006 which authorises a surface water take of up to 181 cubic metres per day from the Kakanui-Kauru Alluvium Aquifer.

Working day has the meaning given to it in the Property Law Act 2007. Notices served after 5pm on a working day, or on a day which is not a working day shall be deemed to have been served on the next succeeding working day.

2. Transfer

2.1 MWC agrees to transfer the MWS to Council on the Settlement Date.

2.2 On the Settlement Date:

- (a) any bank balances and/or overdraft facilities currently under the name of MWC remain with MWC; and
- (b) MWC retains, and is responsible for, any outstanding water accounts owed to or by MWC.

2.3 MWC warrants and undertakes that as at the Settlement Date the MWS is free of any encumbrance.

2.4 MWC shall, no later than one month prior to the Settlement Date, transfer any records and documentation that MWC currently holds that would be relevant to the ongoing operation of the MWS, including any documentation required to transfer or assign the Water Permit.

2.5 The Parties agree that from the Settlement Date:

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- (a) MWC shall cease to administer, operate or have any role in any drinking water supply for the Maheno community;
- (b) the MWS shall no longer be administered or operated by MWC;
- (c) Council shall be wholly responsible for the ongoing operation, administration and maintenance of the MWS, and any other drinking water supply to the township of Maheno; and
- (d) the MWC may provide advice on running the supply.

3. Easement

Grant of Easement

- 3.1 Following the transfer set out in clause 2 of this Agreement, the parties acknowledge that the Tanks will be located on MWC's Land. MWC grants to the Council the Easement over the Easement Area on the terms set out in this clause 3.
- 3.2 From the Settlement Date the Council shall have (as if the Easement were in full force and effect and registered against the record of title for MWC's Land) all the rights and powers (including the rights in respect of entry and maintenance) for the right to convey water as set out in Schedule 5 of the Land Transfer Act Regulations 2018, but extended (for the avoidance of doubt) to include the storing and pumping of water on MWC's Land.

Registration of the Easement

- 3.3 Council may, at its sole discretion and at its cost:
 - (a) instruct a surveyor to lodge a survey plan defining the Easement Area and Easement Facility (**Survey Plan**), together with the necessary Territorial Authority's certification; and
 - (b) procure its solicitors to prepare the necessary Land Information New Zealand documents to allow the registration of the Easement in accordance with the Survey Plan.
- 3.4 MWC will, if required by Council, sign all plans and documents and do all things reasonably necessary to enable the Easement to be registered.

Termination of the Easement

- 3.5 Council may, at its sole discretion, at any time terminate the Easement (whether before or after the Easement is registered against the record of title to MWC's Land) by giving written notice that the Easement is terminated (either immediately or on a specified date). Any termination under this clause 3.5 shall be without prejudice to the rights of either party against the other under this Agreement.
- 3.6 On termination of the Easement, the ownership of any part of the Easement Facility (including for the avoidance of doubt, the Tanks) located on MWC's Land shall pass to the registered owner of MWC's Land. Council shall have no obligation to remove the Tanks or reinstate MWC's Land.
- 3.7 On termination of the Easements the parties will sign all documents and do all things reasonably necessary to enable the Easement to be surrendered from MWC's Land.

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4. Settlement Date

- 4.1 Following entry into this agreement MWC shall ensure that all necessary steps are taken to ensure that the MWS can be transferred in accordance with the terms of this Agreement.
- 4.2 Final transfer of the MWS shall occur on 1 July 2023 (**Settlement Date**).
- 4.3 Consideration will be paid by Council to MWC on the Settlement Date, by Council's solicitor paying the Consideration in cleared funds to MWC's solicitor's trust account.

5. Consideration

- 5.1 In consideration for the transfer of the MWS and grant of the Easement to Council, Council agrees to pay MWC the Consideration. The Consideration shall be paid on the Settlement Date and shall be in full and final settlement of any claim for any other payment or compensation MWC may have in respect of this Agreement or the Easement.

6. Development contributions

- 6.1 Council will not charge development contributions prior to 1 July 2024 to any current MWS consumers who have made an Application at the Settlement Date. This does not preclude development contributions being charged to:
- (a) consumers making new connections to the former MWS once it has been transferred to Council; and
 - (b) existing MWS consumers after 1 July 2024.

7. Parties to execute all documentation

- 7.1 The Parties shall do all things and execute all documentation necessary to complete the transfer of the MWS.

8. Goods and services tax

- 8.1 Unless the context requires otherwise, words and phrases used in this clause have the same meaning as those words and phrases have in the Goods and Services Tax Act 1985 (**GST Act**).
- 8.2 The amount (if any) included in the Compensation to be paid by Council on account of GST charged in respect of the supply will be payable by Council only if the MWC provides a valid tax invoice in respect of the supply.

9. Obligations on sale prior to registration

- 9.1 MWC will not assign this Agreement or transfer or in any way dispose of the whole or any part of MWC's Land or interest in MWC's Land (including granting any mortgage or other encumbrance) except with the prior written consent of the Council which will not be withheld where the party acquiring the estate or interest enters into a deed of covenant (prepared by the Council's solicitors at the MWC's expense) where that party undertakes and agrees:
- (a) that it will be bound by and comply with the terms of this Agreement and the Easement;
 - (b) that it will not assign or transfer or in any way dispose of the whole or any part of its estate or interest in the MWC's Land without first obtaining a like deed of covenant from any party acquiring the estate or interest;

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- (c) to execute all plans, deeds, instruments, transfers, consents and other documents and all things necessary to give effect to the terms of this Agreement and Easement and to enable the registration of the Easement over any part of the MWC's Land if required; and
- (d) that it is not entitled to any payment from the Council.

10. Arbitration

- 10.1 Any dispute which may arise between the parties concerning the interpretation of this Agreement or relating to any other matter arising under this Agreement will be actively and in good faith negotiated by the parties with a view to a speedy resolution of such disputes.
- 10.2 If the parties cannot agree on any dispute resolution technique within 15 (fifteen) Working Days of any dispute being referred in writing by one party to the other, then the dispute will be settled by reference to arbitration with the exception of any matters requiring a statutory decision.
- 10.3 Except as otherwise expressly provided in this Agreement, the reference shall be to a single arbitrator if one can be agreed upon, or to two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to their arbitration), such arbitration to be carried out in accordance with the Arbitration Act 1996 and the substantive law of New Zealand.
- 10.4 The parties will co-operate to ensure the expeditious conduct of any arbitration. In particular, each party will comply with any reasonable time limits sought by the other for settling terms of reference, interlocutory matters and generally all steps preliminary and incidental to the hearing and determination of the proceedings.

11. Miscellaneous

- 11.1 **Severability:** In the event that any part of this Agreement or the Easement becomes void, invalid or unenforceable at any time, that will not affect the validity of the rest of this Agreement or the Easement.
- 11.2 **Entire Agreement:** This Agreement constitutes the entire agreement between the Parties and no earlier representation, warranty or agreement in relation to any matter dealt with in this Agreement has any force or effect from the date of this Agreement.
- 11.3 **No obligation:** Nothing contained or implied in this Agreement shall compel the Council to exercise all or any of its rights in respect of the Easement.
- 11.4 **Counterparts:** This Agreement may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same Agreement. A party may enter into this Agreement by signing a counterpart copy and sending it to the other party, including by facsimile or email.

12. Regulatory Capacity

- 12.1 MWC acknowledges that the Council does not enter into this Agreement in its regulatory capacity, and nothing in this Agreement shall bind the Council in its regulatory capacity. For the purposes of this clause, "regulatory capacity" means any duties and obligations and powers incumbent upon the Council as a "Territorial Authority" (as defined in Section 5(1) of the Local Government Act 2002) or any other capacity under any statutory or regulatory provision under the laws of New Zealand.

Execution

Signed for and on behalf Waitaki District
Council by _____ its duly
authorised officer in the presence of:

Name of authorised officer

Signature of witness

Name of witness

Occupation

Address

Signed by **Maheno Water Committee**
Incorporated by affixing its common seal in the
presence of:

Authorised Witness – Committee Member

Authorised Witness – Committee Member

Secretary

Common Seal

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Schedule 1 – Plan of Maheno Water Supply



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