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Ministry for Primary Industries
Manatū Ahu Matua



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Approval of Terms of Reference for the Irrigation Investment Company Establishment Board

Purpose:

Attached for your and the Minister of Finance's approval are the terms of reference for the Establishment Board of the proposed Crown Irrigation Investment Company.

Minister	Action Required:	Ministers' Deadline
Minister of Finance	Note that Cabinet Economic Growth and Infrastructure Committee authorised the Shareholding Ministers (the Minister of Finance and the Minister for Primary Industries) on 12 December 2012 to approve the terms of reference for the Establishment Board; and	25 February 2013
Minister for Primary Industries	Agree to approve the attached draft terms of reference.	
Cc: Associate Minister for Primary Industries		

Comments:

The Establishment Board's term is to commence on 1 March 2013. It is critical that the attached terms of reference are approved by 25 February so that the members of the Board are well informed of their roles and responsibilities before they commence their terms.

Contact for telephone discussion (if required)

	Name	Position	Work	After Hours
Responsible Manager	Damian Diack	Project Manager, Irrigation Company Establishment	04 894 0123	021 832 228
Principal Author	Prakash Narayan	Senior Analyst, Sector Policy	04 894 0690	

Key Messages

1. Attached for your and the Minister of Finance's approval are the terms of reference for the Establishment Board of the proposed Crown Irrigation Investment Company.
2. Cabinet Economic Growth and Infrastructure Committee authorised the Shareholding Ministers (the Minister of Finance and the Minister for Primary Industries) on 12 December 2012 to approve the terms of reference for the Establishment Board.
3. The Establishment Board's term is to commence on 1 March 2013. It is critical that the attached terms of reference are approved by 25 February so that the members of the Board are well informed of their roles and responsibilities before they commence their terms.
4. The Project Steering Group, comprising senior representatives from the Ministry for Primary Industries, the Treasury, the State Services Commission and the Department of Prime Minister and Cabinet, support the attached terms of reference.

Recommendations

5. MPI recommends that you:
- a) **Agree** to approve the attached terms of reference for the Establishment Board of the proposed Crown Irrigation Investment Company.

Agreed / Not Agreed

Damian Diack
Project Manager
Irrigation Company Establishment Project

Hon Bill English
Minister of Finance

/ / 2013

Agreed / Not Agreed

Hon Nathan Guy
Minister for Primary Industries

/ / 2013

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OFFICIAL INFORMATION ACT

Crown Investment in Off-farm Irrigation Infrastructure: Terms of Reference for the Establishment Board

Purpose of these Terms of Reference

1. These Terms of Reference set out the role and scope of the Establishment Board charged with establishing a Crown-owned company that will manage the Crown's investments in regional water storage and off-farm irrigation infrastructure [EGI Min (12) 29/5 refers].
2. These Terms of Reference should be read in conjunction with the Project Plan and the Terms of Reference for the Cross Departmental Establishment Steering Group.
3. These terms of reference will be updated from time to time following discussions between the shareholding Ministers and the Board Chair.

Background

4. In March 2011, Cabinet agreed [EGI Min (11) 4/6 refers] to a two stage programme to drive economic growth by delivering on the potential for irrigation:
 - a. Stage one: the establishment of the Irrigation Acceleration Fund (IAF).
 - b. Stage two: possible future Crown investment in the construction of water storage and off-farm irrigation infrastructure. Cabinet noted that \$400 million capital expenditure may be required for future equity investment.
5. On 12 December 2012 Cabinet agreed to set aside \$80 million (first tranche) for investments in 2013-14 for stage two, and agreed on a set of principles to guide the Crown's investment decisions with respect to specific schemes. Cabinet also agreed to establish a Crown-owned company to manage the Crown's investments, so that it provides a commercial focus to the investments [EGI Min(12) 29/5 refers].
6. Crown investment in 'optimum build' regional water storage and off-farm irrigation infrastructure is an initiative to unlock reliable water, through well designed schemes, to support ongoing economic growth. The primary rationale for the Crown to invest is to expedite the development of such schemes to maximise the long term economic growth benefits from irrigation in the context of a reformed water management system which is based on setting and managing within limits for water quality and quantity¹.
7. Crown investment will provide for the development transition through to the scheme reaching financial viability on commercial terms such that private

¹ Refer to the Fresh Start for Fresh Water Work Programme. Scheme proponents must demonstrate that their proposition is consistent with the wider Fresh Start for Fresh Water Work Programme, and the National Policy Statement for Fresh Water Management.

sector investment can be attracted to replace the Crown (referred to as the uptake risk period). The intention is to make the schemes financially viable to the extent that the market will invest in schemes it otherwise would not.

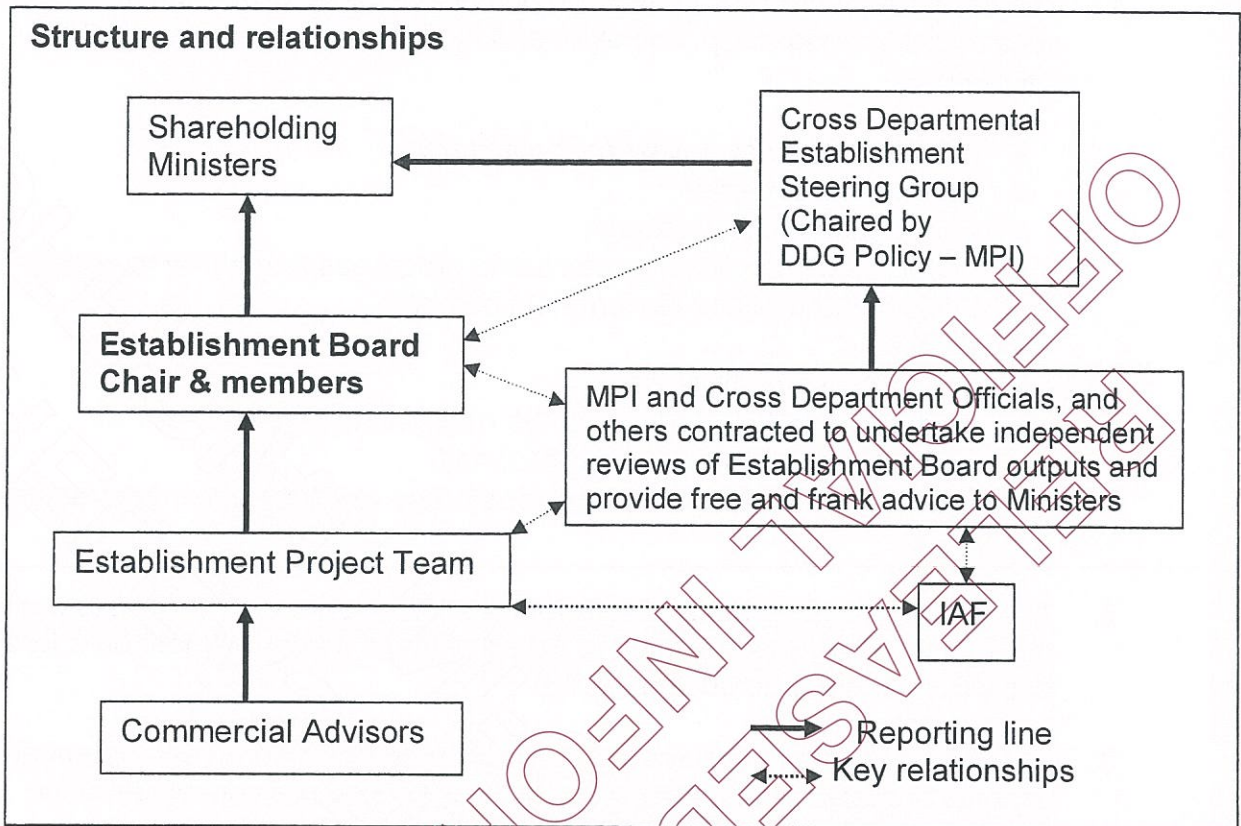
Key tasks of the Establishment Board

8. The Establishment Board will operate from 1 March to 30 June 2013, and it is anticipated that the proposed company will commence from 1 July 2013. The purpose of the Establishment Board is to anticipate, plan and prepare for the company's operations following its establishment.
9. Key tasks for the Establishment Board will involve the following:
 - a. Reviewing proposed institutional arrangements for the company and suggesting any revisions to Shareholding Ministers.
 - b. Developing resources and documents that the company can adopt for its own use, for example strategic planning documents, a budget and forecast financial statements, a view on target operating model, investment principles etc. The resources that the Establishment Board develops should lay a foundation for the company to begin its operations, meet Ministers' expectations and fulfil obligations such as the development of a Statement of Intent.
 - c. Considering how the Board might operationalise the investment principles.
 - d. Commencing on a process of appointing a Chief Executive. This may involve appointing a Chief Executive designate, who if timing and availability allows could assume a project management role during the establishment phase.

Establishment Board structure and relationships

10. The Establishment Board, of seven members including a Chair, will be appointed by Cabinet on the recommendation of the Shareholding Ministers. Members of the Establishment Board will be reconsidered by Cabinet for appointment to the inaugural Board of the proposed investment company. This would depend on their availability and the skills and background required by the proposed Crown company.
11. In carrying out its task the Establishment Board will draw on existing decisions and agreements made by Ministers and relevant domestic and overseas experience in developing the investment company's resources and documents. The Establishment Board is expected to build on the work that has been and is being undertaken by the Irrigation Acceleration Fund.
12. While the Establishment Board will be accountable to the Shareholding Ministers, it will not operate in a vacuum. The Board (and the project team) will seek guidance from the Cross Departmental Establishment Steering Group, and will interact with officials, and the Irrigation Acceleration Fund team to ensure that the resources and documents will deliver on Cabinet's objectives,

and the Company's resources and documents are aligned with Cabinet decisions and government policies and processes.



Operations and resourcing of the Establishment Board

13. The Establishment Board will need to be resourced to ensure appropriate skills are brought to bear in a short space of time. However detailed resourcing will depend on the work programme agreed to accomplish its tasks, and in particular the extent of external advice which is sought. MPI will meet the costs of the Establishment Board, in accordance with Cabinet (EGI) decision of 12 December 2012, and provide staffing resources through secondments and contracts as required, which may include a Chief Executive designate.
14. It is expected that the Establishment Board will meet one or two times per month between 1 March and 30 June 2013.
15. The Establishment Board will have its own team, and will contract external advisors, through MPI, as and when required.
16. On appointment to the Establishment Board, the Board Chair will discuss with MPI the Establishment Board's budget, resources and operations.

Appendix: Establishment Board Composition and Competencies

1. The Establishment Board of seven members will be chosen from the private sector for their leadership, and skills and background in some or all of the following:
 - establishing a new investment company;
 - commercial expertise;
 - banking/finance/investment;
 - understanding political systems and processes and ability to engage with Ministers and senior Government officials;
 - legal;
 - transaction due diligence;
 - leadership and credibility with the rural/primary sector;
 - agricultural commercial expertise; and
 - practical knowledge of how water storage and irrigation infrastructure work.
2. The individuals need to have sufficient time to be able to commit personally to this project (it is expected that the Establishment Board will meet on a fortnightly basis from 1 March to 30 June 2013).
3. The individuals need to have the confidence of the Government, potential scheme proponents and investors. Individuals must be committed to the intentions of the proposed Crown investment.
4. The individuals together must give key Ministers confidence that the complex interactions and alignment of the initiative with other Government policies are fully taken into account, and that public accountability requirements for government investments are satisfied.

Chair of the Establishment Board

5. The Establishment Board will be led by a chair coming from the private sector, with strong leadership skills and knowledge of the primary sector and/or irrigation infrastructure and/or financial investments, and have ability to liaise with Ministers and senior officials. This is mainly due to the technical nature of the Establishment Board's work, very short timeframe, and the Government's commitment to a significant investment that will drive economic growth.



Memorandum

Ref:

To: Wayne McNee, Director-General, Ministry for Primary Industries

Cc: Julie Collins, Acting Deputy Director-General Policy

From: Karen Adair, Acting Director, Sector Policy

Date: 25 February 2013

Subject: **Monitoring Options for Crown Irrigation Investment Company**

Purpose:

1. The purpose of this paper is to identify options and seek MPI's views for monitoring the proposed Crown Irrigation Investment Company (CIIC) to be established for investing as equity partner in regional water storage and off-farm irrigation schemes.

Background:

2. The Steering Group has agreed that CIIC should be a Crown entity company. It will therefore be subject to the provisions of the Crown Entities Act 2004 (the Act) regime. According to section 88 of the Act and Cabinet Office Circular CO (06) 5¹, the Shareholding Ministers' key roles and responsibilities in relation to a Crown entity company are to:
 - make sure an effective board is in place to govern the company;
 - participate in setting and monitoring the company's strategic direction and targets;
 - monitor and review the company's operations, performance and results; and
 - manage risks on behalf of the Crown.
3. The monitoring department's roles are chiefly to:
 - advise and support Ministers and the company about Board member appointments, the company's strategic direction, and planning processes;
 - advise Ministers whether the company's strategic direction complements and is consistent with the Government's and the sectors' goals;
 - provide Ministers advice and quality assurance around performance and results; and
 - assess and notify the Ministers of any opportunities, emerging issues and risks, and advise Ministers on the management of such issues and risks.
4. CIIC will have two shareholding Ministers, the Minister of Finance and the Minister for Primary Industries. CIIC will be a minority equity investor in regional water storage and off-farm irrigation schemes that are economically viable in the long term. At any one time CIIC is likely to have equity investments in several schemes.

¹ Cabinet Office Circular CO (06) 5: Ministers' Roles and Responsibilities in Relation to Crown Entities

Monitoring Function 1: Setting the Company's Strategic Direction

5. The Shareholding Ministers will be responsible for keeping the Board well informed about Government policies and the Government's expectations for CIIC's strategic direction. The Ministers' 'letter of expectation'² and their participation in strategic ongoing conversations with the Board will set CIIC's strategic direction.
6. While the Ministers will get the opportunity to review and comment on a draft *Statement of Intent* (SOI), they can engage with the Board before CIIC submits a draft SOI for the Minister's consideration.
7. The monitoring department's role in the 'letter of expectation' phase will include advising and discussing with the Ministers the key expectations, drafting letters for the Ministers, and discussing the expectations with the Board in more detail once conveyed by the Ministers.
8. The monitoring department will assess CIIC's response, including any strategic issues it has identified, and advise the Ministers. The Board's response will give the department an indication of the CIIC's SOI. This will enable the department to engage with CIIC from the start of its business planning cycle, and set the goals, scope and performance targets for its SOI.
9. The monitoring department will analyse the draft SOI and business plan and advise the Ministers, and give the Ministers opportunity to input into CIIC's strategic direction and financial intentions. The department will review the final SOI to check that the Ministers' comments have been incorporated.

Monitoring Function 2: Performance monitoring and reporting

10. CIIC's Board will have the primary responsibility for monitoring and reporting CIIC's performance and the performance of each of its investments. As outlined above, the role of the monitoring department will be to:
 - advise Ministers whether CIIC's strategic direction complements and is consistent with the Government's and the sectors' goals;
 - provide Ministers advice and quality assurance around performance and results;
 - advise Ministers on the performance of CIIC and its investments, using performance measures agreed by CIIC's Board and the Ministers; and
 - assess and notify the Ministers of any opportunities, emerging issues and risks, and advise Ministers on the management of such issues and risks.
11. To provide the basis for clear accountability relationship between the Shareholding Ministers and the Board formal reporting timeframes will need to be agreed by the two parties. This could be along the lines adopted by Crown Ownership Monitoring Unit (COMU), some of which are required by the State-Owned Enterprise Act 1986:
 - Quarterly reports – to assess CIIC's financial and non-financial performances, and prepare reports to the Ministers on performance and alert Ministers to issues and

² Letters of expectation canvas Ministers' expectations for Crown entities' strategic direction, the Crown entities' governance and performance and Ministers' specific priorities for the planning period. Letters of expectation are likely to be sent annually before boards start preparing their Statement of Intent.

risks. COMU also prepares portfolio quarterly performance reports to Cabinet, covering all its Crown entities.

- Half-yearly (portfolio) report – COMU's half-yearly report covers all its Crown entities for tabling in Parliament. The report covers companies' performance against budget and comments on achievements, issues and risks.
- Annual (portfolio) report – provides COMU's report on all the companies' performance and compares with the intentions in their SOIs, and advises the Ministers on each of the companies' performance, issues, and risks to ensure the Ministers are prepared to respond to the issues and discuss performance changes with the Boards.
- COMU's other monitoring activities include attending annual public meetings of the companies, advising the Ministers for their annual shareholding meetings with the Boards, setting benchmarks for the companies' performance, and engaging with the Boards on their strategic decisions.

Monitoring Function 3: Ensuring financially responsible management

12. This will be to ensure that CIIC will operate in a financially responsible manner, and the Ministers will be responsible for ensuring that CIIC's funding issues are appropriately dealt with. This could involve requiring any application from CIIC for additional operating funding, or for a capital injection from the Crown, is submitted as per the budget timetable [This to be further developed for consistency once the Steering Group has finalised the funding model paper].
13. At any one time CIIC is likely to have a portfolio of investments in a number of schemes. CIIC's Board will have primary responsibility for monitoring and reporting on each of CIIC's investments. The monitoring department's oversight will be over CIIC's performance. [Further consideration to be given whether the monitoring department should also have a monitoring and reporting oversight role over the irrigation entities that CIIC invests in].

Skills required for monitoring CIIC

14. Given that CIIC's primary role will be to invest in irrigation schemes, as a minority equity investor, the following would be the essential skills that will be required by the monitoring agency:
 - a. financial analytical skills;
 - b. understanding of the commercial environment and financial instruments;
 - c. senior experience in working with boards;
 - d. ability to build strong relationships with Ministers, senior management in the relevant departments, and the Board Chair;
 - e. ability to provide clear guidance as to both generic and specific expectations of shareholding Ministers;
 - f. ability to anticipate issues and suggest mitigation strategies;
 - g. understanding of the policy and wider operating context of CIIC, its investment activities, and how its investments impact on financial risk management and balance sheet management; and
 - h. understanding the "governance boundaries" between Ministers as owners, monitoring staff as owners' agents, and the Board's governance responsibilities.
15. It is not essential that the monitors have working knowledge of irrigation development, irrigation schemes, or the industries that will access water from those schemes. Irrigation Acceleration Fund team will be one source of that information.

Monitoring Options

16. Departments monitor Crown entities for which their Minister is responsible, unless the Minister directs otherwise and identifies who will undertake monitoring instead (Cabinet Office Circular CO (06) 5). CIIC will have two shareholding Ministers, the Minister of Finance and the Minister for Primary Industries. Ministers should have explicit agreements in place with department setting out their monitoring responsibilities (for example, the department's output plan should reflect these responsibilities).

Option 1 – All monitoring functions with MPI

17. Pros

MPI, with the knowledge of the sectors, will be well positioned to:

- i. identify emerging issues and risks, and provide advice to the Ministers and the Board how to respond to those emerging issues, and manage those risks; and
- ii. engage with the Board and the Ministers in guiding the development of the company's SOI and strategic fit with the Government's and the sectors' goals.

18. Cons

- a. MPI's monitoring resources are light, with only 0.5 FTE for the Walking Access Commission which has a small operating budget. Systems and processes will need to be developed to monitor a commercial company with a large investment fund (see skills required in paragraph 14 above).
- b. The drawbacks with MPI not having the economies of scale in monitoring that COMU has include:
 - i. COMU's large team enables it to develop and retain specialist skills, take a team approach to monitoring, and provide backup when required; and
 - ii. if MPI added another FTE³ for monitoring CIIC, it may still not get adequate management support with the right skills to oversee this monitoring.
- c. Monitoring of CIIC by some agency other than MPI will provide for a greater separation from MPI's sector policy functions and the Irrigation Acceleration Fund's feasibility study work with promoters of potential irrigation schemes.

Option 2 – All monitoring functions with COMU⁴

19. Pros

- a. COMU, part of the Treasury, has a monitoring role in relation to a large number of Crown entity companies (key exceptions are Crown Research Institutes monitored by the Ministry of Business, Innovation and Employment). They have:
 - i. established systems and processes to monitor entities like CIIC;
 - ii. trained analysts, specialised resources, and managers dedicated to monitoring Crown commercial companies;

³ COMU estimates that COMU will require around 0.5 additional FTE to monitor CIIC. Given that COMU has economies of scale in monitoring Crown companies, it is estimated that MPI will require much more than 0.5 FTE to monitor CIIC, and that will grow as CIIC grows in complexity over time when it invests in more schemes.

⁴ Ministry for Business, Innovation and Employment also has a Crown company monitoring function but these are designed mainly around the Crown Research Institutes.

- iii. a team large enough with management support to provide economies of scale in monitoring an additional company without significant increase in staff resources (they estimate additional 0.5 FTE for CIIC), and have specialist skills and ability to provide backup;
 - iv. a reporting format that can easily accommodate CIIC and could fit CIIC into its existing portfolio reporting to Cabinet and Parliament; and
 - v. an established benchmarking and company valuation methodologies that could be extended to monitor CIIC.
- b. Monitoring of CIIC by COMU will provide greater independence from MPI's sector policy functions and the Irrigation Acceleration Fund's feasibility study work with promoters of potential irrigation schemes.

20. *Cons:*

COMU monitors Crown companies across a range of sectors and will not have the same depth of understanding of the primary sectors as MPI to monitor and provide advice on opportunities, emerging issues and risks.

21. As with other monitoring that COMU has in place with other departments, COMU has systems in place to work closely with departments and therefore MPI will be consulted by COMU on matters relating to CIIC. MPI would still be the lead policy agency and continue to advise the Ministers on policy matters. With COMU having the formal relationship with the Board it would ensure it is providing a 'whole of government' perspective in their discussions with the Board.
22. The above could be formalised through a memorandum of understanding (MoU) between MPI and COMU. Ministers agreed to similar arrangements in 2012 for the monitoring of Accident Compensation Corporation and Housing New Zealand Corporation, with combined assets of \$37 billion. The MoU between the Ministry of Business, Innovation and Employment (MBIE) and COMU enables MBIE to provide policy advice to the Ministers and COMU to carry out the full monitoring tasks. The MoU also provides the basis for consultation and collaboration between MBIE and COMU on areas of common interest.

Option 3 - Joint MPI and COMU monitoring (Not supported by Treasury)

23. There are currently no formal shared monitoring arrangements in place between COMU and another department.
24. While this option provides a greater opportunity to draw on a wider pool of skills and knowledge, with COMU's monitoring capability and MPI's sector knowledge, it has the following drawbacks:
- a. duplication of effort;
 - b. lack of clarity for the Board and the entity being monitored;
 - c. risk of conflicting advice to shareholding Ministers; and
 - d. lack of accountability for the monitoring agency.

Conclusions

25. On balance, there will be greater benefits from COMU monitoring CIIC than MPI, largely because of the dedicated and specialist resources and systems that they already have in place for monitoring Crown companies and it has economies of scale in this area. If desired a close working relationship could be facilitated through the use of a MoU between COMU and MPI that would clarify MPI's lead role in providing policy advice to the Ministers and establish the basis for consultation and collaboration between COMU and MPI on areas of common interest.

Recommendations

26. It is recommended that you:

- a. **agree** to support a proposal that all monitoring of the proposed Crown Irrigation Investment Company (CIIC) is assigned to the Crown Ownership Monitoring Unit (COMU); and

Agreed / Not Agreed

If you agree to the above:

- b. **agree** to seek an arrangement for a memorandum of understanding between MPI and COMU that would clarify MPI's lead role in providing policy advice to the Ministers and establish the basis for consultation and collaboration between COMU and MPI on areas of common interest.

Agreed / Not Agreed

Karen Adair
Acting Director, Sector Policy

Wayne McNee
Director-General
Ministry for Primary Industries

16/2 / 2013

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