



Memo

TO Tony McCormick / Aimee Bennett
FROM Andrew Leete / Hamish Mander
DATE 25 June 2015
CLIENT Opuha Water Limited
SUBJECT Remaining D Shares

- 1 You have asked us to advise whether or not OWL may redeem and surrender any D Shares that are remaining after 1 July 2015 for \$50.00 per share (being the same price per share that was paid to shareholders who required OWL to redeem their D Shares prior to 1 July 2015).
- 2 In short, OWL is not technically able to pay a \$50.00 per share for each D Share that remains after 1 July 2015, unless the fair value of those shares is determined to be \$50 by a suitably qualified person.
- 3 Under paragraph 18.7 of the Merger Proposal, after 1 July 2015 OWL may, at its option, redeem or surrender D Shares for the greater of the fair value and \$1.00 per share.
- 4 Under paragraph 18.8 of the merger proposal fair value of any D Shares is to be determined by a suitably qualified person appointed by OWL (in its sole discretion) who is not associated with, or interested in, OWL. Such a suitably qualified person could for example be Peter Seed who provided valuations for the purposes of the merger. Based on his methodology for previously valuing the shares for the irrigation scheme we think that it is unlikely that he would provide a value of \$50 or more per share. If Peter Seed was engaged we do not envisage that this would be a difficult or expensive exercise.
- 5 We appreciate that the board is wanting to be "fair" in redeeming the D Shares for \$50.00 per share, but the technical legal requirements around the redemption prevent the board doing so (unless fair value is determined to be \$50.00 per share).
- 6 Further, certain matters under the Companies Act 1993 will need to be attended to prior to redeeming the shares. These matters are mostly procedural and relatively simple to attend to. They include:
 - 6.1 the board resolving and signing a certificate that:
 - (a) the redemption of the shares is in the best interests of the company; and
 - (b) the consideration for the redemption of the shares is fair and reasonable to the company;
 - (c) the redemption of the shares is of benefit to the remaining shareholders;
 - (d) the consideration for the redemption of the shares is fair and reasonable to the remaining shareholders; and
 - (e) the company will satisfy the solvency test immediately after the shares are redeemed,

and giving its reasons for resolving such; and

6.2 sending a disclosure statement to each shareholder which sets out:

- (a) the nature and terms of the redemption of the shares;
- (b) the names of the shareholders who are having their shares redeemed;
- (c) the text of the resolutions referred to in paragraph 5.1(a) and (b) above; and
- (d) any such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed redemption. This information will be similar to the information on D Shares that was previously provided in the Merger Proposal.

7 The option to redeem the D Shares must be then exercised not less than 10 and not more than 30 working days after the disclosure statement has been sent to each shareholder.

8 It may appear that there a number of things that need to be done to redeem the remaining D Shares. However, the framework for redeeming these shares has already been discussed and finalised in the Merger Proposal. Therefore the outstanding matters are largely procedural in nature. We are more than happy to assist in guiding you through this process.