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Ministry for Primary Industries  
Manatū Ahu Matua



5 June 2013

Document Number: B12-833

## Crown Investments in Irrigation – Listing the Investment Company under the Ombudsmen Act

### Purpose:

This paper seeks your agreement to list Crown Irrigation Investments Limited under the Ombudsmen Act 1975.

Minister	Action Required:	Minister's Deadline
<b>Minister of Finance</b>  <b>Minister for Primary Industries</b>	<b>Agree</b> to seek an Order-in-Council to list Crown Irrigation Investments Limited under Part 2 of Schedule 1 of the Ombudsmen Act 1975; and  <b>Agree</b> to direct officials to prepare a paper for the Minister for Primary Industries to take the above Order-in-Council to the Cabinet Legislation Committee for consideration.	By 14 June 2013 to give Parliamentary Counsel sufficient time to draft an Order-in-Council for consideration by LEG on 4 July 2013.
CC Associate Minister for Primary Industries		

### Contact for telephone discussion (if required)

	Name	Position	Work	After Hours
Responsible Manager	Karen Adair	Acting Director, Sector Policy	04 819 4467	021 409993
Principal Author	Prakash Narayan	Senior Analyst, Sector Policy	04 894 0690	

## Key Messages

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1. This brief seeks your agreement to list Crown Irrigation Investments Limited (CIIL), the proposed Crown-owned company to manage the Crown's investments in regional irrigation infrastructure, under Part 2 of Schedule 1 of the Ombudsmen Act 1975 (the Act).
2. By listing CIIL under the Act the provisions of the Act will apply to this organisation. This will enable the Office of the Ombudsman to handle any complaints against CIIL and undertake investigations and inspections. Organisations listed in the First Schedule of the Ombudsmen Act are subject to the jurisdiction of the Ombudsman. Part 2 of this schedule lists organisations that are not government departments or local government organisations.
3. In April you agreed to a proposal to establish CIIL as a Crown Entity Company, and list on schedule 2 of the Crown Entities Act 2004. This also requires an Order-in-Council to be prepared.
4. The Ministry for Primary Industries (MPI) will send drafting instructions to the Parliamentary Counsel Office to prepare two Orders-in-Council for the above listings, and draft a Cabinet paper for you to take the Orders-in-Council to Cabinet Legislation Committee in early July.
5. The Treasury was consulted in the preparation of this briefing paper.



## Recommendations

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6. MPI recommends that you:

- a) **Agree** to seek an Order-in-Council to list Crown Irrigation Investments Limited under Part 2 of Schedule 1 of the Ombudsmen Act 1975; and

**Agreed / Not Agreed**

- b) **Agree** to direct officials to prepare a paper for the Minister for Primary Industries to take the above Order-in-Council to the Cabinet Legislation Committee for consideration.

**Agreed / Not Agreed**

Karen Adair  
Acting Director  
Sector Policy

Hon Bill English  
Minister of Finance

/ / 2013

Hon Nathan Guy  
Minister for Primary Industries

/ / 2013

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**Ministry for Primary Industries**  
Manatū Ahu Matua



11 June 2013

Document Number: B12-904

**Crown Irrigation Investments Limited – seeking your approval of the Company’s constitution**

**Purpose:**

This briefing paper seeks your approval of the draft constitution for Crown Irrigation Investments Limited.

Minister	Action Required:	Minister's Deadline
<b>Minister of Finance</b>	<b>Agree</b> on the revised purpose of the company for inclusion in the company's constitution; and	By 21 June 2013 so that the company can be registered under the Companies Act 1993 with the Company's Office in time for commencement on 1 July 2013.
<b>Minister for Primary Industries</b>	<b>Agree</b> to approve the attached draft constitution for Crown Irrigation Investments Limited.	
<b>CC Associate Minister for Primary Industries</b>		

**Contact for telephone discussion (if required)**

	Name	Position	Work	After Hours
Responsible Manager	Karen Adair	Acting Director, Sector Policy	04 819 4467	021 409993
Principal Author	Prakash Narayan	Senior Analyst, Sector Policy	04 894 0690	



1. Attached for your review and approval is the draft constitution of Crown Irrigation Investments Limited (CII), the proposed Crown-owned company to manage the Crown's investments in off-farm regional irrigation infrastructure. The approved constitution will be submitted to the Companies Office on 1 July 2013, the day the proposed company will be registered under the Companies Act 1993.
2. As shareholding Ministers you agreed in April 2013 that the following will be specified in the company's constitution as its purpose (Brief B12-574 refers):

*Purpose of the company*

*The purpose of the company is to implement government policy by co-investing in off-farm irrigation schemes which would not otherwise be established and are expected to be commercially viable in the long term; and to seek to exit those investments once they become commercially viable.*

*In doing so the company will:*

- *manage investments using best practice investment management approaches; and*
- *not seek a controlling interest in irrigation schemes.*

3. Following further review of the above purpose statement by officials and feedback received from the Establishment Board and its legal advisors, Simpson Grierson, officials propose the following as purpose of the company:

*Purpose of the company*

*The purpose of the Company is to implement government policy by co-investing in off-farm irrigation schemes which are expected to be commercially viable in the long term; and to seek to exit those investments once they become commercially viable.*

*In so doing the Company will:*

- *seek to avoid investing in irrigation schemes where its investment will replace or crowd out alternative investment which is available to a scheme; and*
- *manage its investments using best practice investment management approaches; and*
- *not seek a controlling interest in irrigation schemes.*

4. Officials agree with the Establishment Board that the words "would not otherwise be established" as agreed by the Ministers in April 2013 (as in paragraph 2 above) are overly restrictive of the Board's capacity to invest. It would require CII's Board to establish that it was acting genuinely as a financier of last resort. This could be interpreted as requiring potential scheme operators to exhaust all other financing and capital raising avenues before they could be considered by CII. This may give rise to potential legal risks for CII directors, as directors may breach their statutory duties if they approve an investment before other funding sources have been exhausted by a scheme. A consequence of this is that CII directors may become overly conservative and not be willing to provide financial support to any scheme unless absolutely certain that every other avenue of potential funding has been exhausted.



5. The proposed amendment in paragraph 3 above retains the investment principle agreed by Cabinet in December 2012 that "*the Crown will not be subsidising or crowding out private investments*".
6. The Establishment Board considered the draft constitution at its meeting on 7 June 2013 and the Board has endorsed the draft with the amendment proposed in paragraph 3 above. Officials from the Treasury, Crown Ownership Monitoring Unit and the Ministry for Primary Industries support the draft constitution with the above amendment.
7. Other than the purpose and nature of the company clauses in CII's draft constitution, this constitution has provisions similar to the provisions in the constitutions of similar recently established Crown-owned companies.

### Recommendations

8. MPI recommends that you:
  - a) **Agree** on the revised purpose of the company, as presented in paragraph 3 above, for inclusion in the company's constitution;  
**Agreed / Not Agreed**
  - b) **Agree** to approve the attached draft constitution of Crown Irrigation Investments Limited for registration under the Companies Act 1993 with the Companies Office; and  
**Agreed / Not Agreed**
  - c) **Note** that the Establishment Board for Crown Irrigation Investments Limited considered the draft constitution at its meeting on 7 June and endorsed the attached draft Constitution.  
**Noted**

Karen Adair  
Acting Director  
Sector Policy  
Policy Branch

Hon Bill English  
Minister of Finance

/ / 2013

Hon Nathan Guy  
Minister for Primary Industries

/ / 2013

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21 June 2013

Document Number: B12-965

## Sign the consent form for incorporating Crown Irrigation Investments Limited

### Purpose:

This briefing recommends that you sign the attached shareholders' consent forms for incorporating Crown Irrigation Investments Limited on 1 July 2013.

Minister	Action Required:	Minister's Deadline
<b>Minister of Finance</b>  <b>Minister for Primary Industries</b>	<p><b>Note</b> that shareholders' consent is required to incorporate Crown Irrigation Investments Limited under the Companies Act 1993, and</p> <p><b>Agree</b> to sign the attached shareholders' consent forms (one for each Minister) and return to the Ministry for Primary Industries by 28 June 2013.</p>	<p>Ministers to sign the consent forms and return to MPI by 28 June 2013, for incorporating the company on 1 July 2013.</p>
<b>CC Associate Minister for Primary Industries</b>		

### Contact for telephone discussion (if required)

	Name	Position	Work	After Hours
Responsible Manager	Karen Adair	Acting Director Sector Policy	04 819 4467	021 409993
Principal Author	Prakash Narayan	Senior Analyst Sector Policy	04 894 0690	

1. Attached for your signatures are shareholders' consent forms (one for each Minister) for incorporating Crown Irrigation Investments Limited on 1 July 2013.
2. The signatures must be in black or blue ballpoint (not fountain pen ink as it will become too faint for scanning and uploading). Where an Acting Minister signs the consent form the Companies Office requires documentation to verify the acting appointment.
3. The signed forms are to be returned to the Ministry for Primary Industries (MPI) by 28 June for MPI to upload the signed forms on to the Companies Office website on 1 July, for incorporating the company under the Companies Act 1993.
4. Also attached for your information are registration details of the Company.

### Recommendations

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5. MPI recommends that you:
  - a) **Note** that shareholders' consent is required to incorporate Crown Irrigation Investments Limited under the Companies Act 1993 on 1 July 2013; and
  - b) **Agree** to sign the attached shareholders' consent forms (one for each Minister) and return to the Ministry for Primary Industries by 28 June 2013.

**Noted**

**Agreed / Not Agreed**

Karen Adair  
Acting Director  
Sector Policy  
MPI Policy

Hon Bill English  
Minister of Finance

/ / 2013

Hon Nathan Guy  
Minister for Primary Industries

/ / 2013



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21 June 2013

Document Number: Sub12-099

## LEG Paper – Two Orders in Council for Crown Irrigation Investments Limited

### Purpose:

Attached for your signature is a paper to the Cabinet Legislation Committee (LEG) seeking authorisation to submit the following two Orders in Council to the Executive Council:

- Crown Entities (Crown Irrigation Investments Limited) Order 2013; and
- Ombudsmen Act (Schedule 1 – Crown Irrigation Investments Limited) Order 2013.

Minister	Action Required:	Minister's Deadline
Minister of Finance	<p>Note that you have agreed to list Crown Irrigation Investments Limited under Schedule 2 of the Crown Entities Act 2004, and under Schedule 1 of the Ombudsmen Act 1975; and</p> <p>Agree to submit the attached Cabinet paper to LEG.</p>	<p>For submission to Cabinet Office by 10.00am Monday 1 July 2013 for consideration by LEG on Thursday 4 July 2013.</p>
Minister for Primary Industries		
CC Associate Minister for Primary Industries		

Contact for telephone discussion (if required)

	Name	Position	Work	After Hours
Responsible Manager	Karen Adair	Acting Director, Sector Policy	04 819 4467	021 409 993
Principal Author	Prakash Narayan	Senior Analyst, Sector Policy	04 894 0690	

## Key Messages

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1. This brief recommends that you sign the attached paper for submission to the Cabinet Legislation Committee (LEG) seeking authorisation to submit the following two Orders in Council to the Executive Council:
  - Crown Entities (Crown Irrigation Investments Limited) Order 2013; and
  - Ombudsmen Act (Schedule 1 – Crown Irrigation Investments Limited) Order 2013.
2. On 1 April 2013 you agreed to a proposal to establish Crown Irrigation Investments Limited (Crown Irrigation) as a Crown entity company, and list it on Schedule 2 of the Crown Entities Act 2004 by an Order in Council [B12-574 refers].
3. On 11 June 2013 you agreed to a proposal to list Crown Irrigation under Part 2 of Schedule 1 of the Ombudsmen Act 1975 (the Act) [B12-833 refers]. This listing would enable the provisions of the Act to apply to Crown Irrigation so that the Office of the Ombudsman could handle any complaints against Crown Irrigation and undertake investigations and inspections. This would also make Crown Irrigation subject to the provisions of the Official Information Act 1982.
4. The Parliamentary Counsel Office has drafted the two proposed Orders in Council and certified them for submission to Cabinet. The two Orders in Council will come into force on 8 August 2013. We recommend that you submit the proposed Orders in Council to LEG for its consideration on 4 July 2013.



## Recommendations

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5. MPI recommends that you:
- a) **Note** that on 1 April 2013 you agreed to list Crown Irrigation Investments Limited under Schedule 2 of the Crown Entities Act 2004;
  - b) **Note** that on 11 June 2013 you agreed to list Crown Irrigation Investments Limited under Part 2 of Schedule 1 of the Ombudsmen Act 1975; and
  - c) **Agree** to sign the attached Cabinet paper for submission to the Cabinet Legislation Committee seeking authorisation to submit the following Orders in Council to the Executive Council:
    - i. Crown Entities (Crown Irrigation Investments Limited) Order 2013; and
    - ii. Ombudsmen Act (Schedule 1 – Crown Irrigation Investments Limited) Order 2013.

**Noted**

**Noted**

**Agreed / Not Agreed**

Karen Adair  
Acting Director  
Sector Policy  
Policy Branch

Hon Bill English  
Minister of Finance

/ / 2013

Hon Nathan Guy  
Minister for Primary Industries

/ / 2013

Chair  
Cabinet Legislation Committee

**Crown Entities (Crown Irrigation Investments Limited) Order 2013; and  
Ombudsmen Act (Schedule 1 – Crown Irrigation Investments Limited) Order 2013**

**Proposal**

1. This paper recommends that the Cabinet Legislation Committee (LEG) authorise the submission of the following two Orders in Council to the Executive Council:
  - i. Crown Entities (Crown Irrigation Investments Limited) Order 2013, to be made under the Crown Entities Act 2004; and
  - ii. Ombudsmen Act (Schedule 1 – Crown Irrigation Investments Limited) Order 2013, to be made under the Ombudsmen Act 1975.

**Policy**

2. On 12 December 2012 Cabinet [EGI Min (12) 29/5 refers]:
  - i. agreed to support Crown investments in off-farm irrigation infrastructure;
  - ii. agreed to set aside \$80 million for 2013-2014 for this purpose;
  - iii. signalled a willingness to invest up to \$400 million; and
  - iv. agreed that a Crown-owned company should be established to manage investments in off-farm irrigation infrastructure.

*Listing under the Crown Entities Act 2004*

3. On 1 April 2013 the shareholding Ministers, the Minister of Finance and the Minister for Primary Industries, agreed to establish Crown Irrigation Investments Limited (Crown Irrigation) as a Crown entity company as opposed to a State Owned Enterprise or Public Finance Act company because Crown Irrigation will:
  - a. not seek to maximise profits in line with a comparable private business as a State Owned Enterprise must. It will invest without necessarily expecting a commercial rate of return; and
  - b. be fully Crown-owned at least in the first instance which is a requirement for Crown entity companies. Public Finance Act companies provide for mixed ownership, but this is not necessary for Crown Irrigation.
4. Crown Irrigation will therefore require listing on Schedule 2 of the Crown Entities Act 2004 (CEA) by an Order in Council.
5. Crown entity companies are established as standard companies under the Companies Act 1993 and then listed, by Order in Council, on Schedule 2 of the CEA, which imposes certain obligations. The Order in Council specifies whether they are subject to, or exempt from, sections 161-165 of the CEA which restrict: acquisition of securities, borrowing, giving of guarantees and indemnities, and derivatives to circumstances prescribed by regulation, or with an approval from the Minister of Finance.



6. Shareholding Ministers agreed on 1 April 2013 that Crown Irrigation will be exempt from the requirements of section 161 of the CEA. This will remove restrictions on the acquisition of securities. Ministers agreed that Crown Irrigation will acquire securities when making investments. This may be frequent. Requiring frequent shareholder approval would be cumbersome and erode the "arm's length" relationship. Exemptions to sections 162-165 are not required.

#### *Listing under the Ombudsmen Act 1975*

7. On 11 June 2013 shareholding Ministers agreed to a proposal to list Crown Irrigation under Part 2 of Schedule 1 of the Ombudsmen Act 1975 (the Act). This listing would enable the provisions of the Act to apply to Crown Irrigation so that the Office of the Ombudsman could handle any complaints against Crown Irrigation and undertake investigations and inspections. This would also make Crown Irrigation subject to the provisions of the Official Information Act 1982.

#### **Timing and 28 day rule**

8. The two Orders in Council will come into force on 8 August 2013. This complies with the 28-day rule for notification of Orders in Council in the *New Zealand Gazette*.

#### **Compliance**

9. The two Orders in Council comply with:
  - a. principles of the Treaty of Waitangi;
  - b. rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - c. principles and guidelines set out in the Privacy Act 1993;
  - d. relevant international standards and obligations; and
  - e. LAC Guidelines: Guidelines on Process and Content of Legislation, a publication by the Legislation Advisory Committee.

#### **Regulations Review Committee**

10. I consider that there are no grounds for the Regulations Review Committee to draw the two Orders in Council to the attention of the House under Standing Order 315.

#### **Certification by Parliamentary Counsel**

11. The two Orders in Council have been certified by Parliamentary Counsel Office as being in order for submission to Cabinet.

## Regulatory impact analysis

12. A Regulatory Impact Statement has not been prepared because the two proposals are of minor and mechanistic nature and the same provisions apply to all similar Crown-owned entities.

## Publicity

13. No press statement is proposed. The Board of Crown Irrigation will be informed.

## Consultation

14. The Treasury, the Ministry of Justice, and the State Services Commission were consulted and the Department of the Prime Minister and Cabinet were given the opportunity to comment on this paper and the attached Orders in Council.

## Recommendations

15. The Minister for Primary Industries recommends that the Cabinet Legislation Committee:
  - 1 **Note** that on 12 December 2012 Cabinet agreed to support Crown investments in off-farm irrigation infrastructure, and that a Crown-owned company should be established to manage these investments;
  - 2 **Note** that Crown Irrigation Investments Limited's shareholding Ministers have agreed to list the company under Schedule 2 of the Crown Entities Act 2004;
  - 3 **Note** that shareholding Ministers have agreed to list Crown Irrigation Investments Limited under Part 2 of Schedule 1 of the Ombudsmen Act 1975;
  - 4 **Authorise** the submission of the Crown Entities (Crown Irrigation Investments Limited) Order 2013 to the Executive Council;
  - 5 **Authorise** the submission of the Ombudsmen Act (Schedule 1 – Crown Irrigation Investments Limited) Order 2013 to the Executive Council; and
  - 6 **Note** that the above two Orders in Council will come into force on 8 August 2013.

Hon Nathan Guy  
Minister for Primary Industries  
(on behalf of the shareholding Ministers)

/ / 2013