



11 June 2014

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### Notice of Special Meeting of Shareholders

Notice is hereby given that a special meeting of the shareholders of Windflow Technology Limited (the *Company*) will be held at The Nightmarch Room, Riccarton Park, Racecourse Road, Christchurch on Wednesday 25 June 2014 at 7:30 pm.

#### BUSINESS

- A. **Welcome**
- B. **Apologies and Proxies**
- C. **Notified Motion for Ordinary Resolutions of Shareholders:**
  - (i) **Private Placement of 2,000,000 New Preference Shares**
  - (ii) **Possible Further Private Placements**
  - (iii) **Approval for the purposes of the Takeovers Code**

Please ensure you read the following resolution together with the Explanatory Notes attached to this Notice of Special Meeting of Shareholders (*Explanatory Notes*).

In this Notice:

- "January Preference Shares" means Preference Shares allotted on 8 January 2014 in accordance with the short-form prospectus and investment statement of the Company dated 26 November 2013 as amended by memoranda of amendments to registered prospectus dated 4 December 2013 and 23 December 2013.
- "March Preference Shares" means Preference Shares allotted on 21 March 2013 in accordance with the short-term prospectus and investment statement of the Company dated 12 February 2013.
- "New Preference Shares" means the New Preference Shares to be allotted with terms and conditions attached that are the same terms and conditions attaching to the January Preference Shares and otherwise issued on the terms and conditions set out in the Conditional Share Preference Deed between the Company and David Walter Iles dated 9 April 2014 or any future agreement between the Company and David Walter Iles.
- "Preference Shares" means redeemable convertible preference shares (plural or singular as the context requires) in the Company and includes all March Preference Shares, January Preference Shares and New Preference Shares.

For the avoidance of doubt, the Company has previously allotted two types of Preference Shares, one type being March Preference Shares and the other type being the January Preference Shares. Other capitalised terms in this Notice have (unless the context requires otherwise) the meaning given in the Explanatory Notes.

#### **Resolution 1 (to be passed as an ordinary resolution) – Private Placement of 2,000,000 New Preference Shares**

To consider and, if thought fit, pass the following as an ordinary resolution in accordance with NZAX Listing Rules 7.3.1(a), 7.5 and 9.2.1:

*That, subject to compliance with all applicable laws and the constitution of the Company, the Company allot 2,000,000 New Preference Shares at a price per New Preference Share of \$0.50 each to David Walter Iles. The issue price payable by David Walter Iles for the allotment of the New Preference Shares shall be a debt in the amount that is Great British pounds sterling (GB£) equivalent of NZ\$1,000,000.00 (determined using the daily midrates quoted by the Reserve Bank of New Zealand on the date the final approval for the allotment is*

*obtained by the Company). Payment of this issue price will be made by the reduction of the debt owed to Mr Iles by Windflow UK Limited under a loan for the Ludenhill approved project made pursuant to a loan agreement between David Walter Iles and Windflow UK Limited dated 11 July 2012 as amended by a deed of variation dated 3 January 2014 by the amount of the issue price. On allotment of the New Preference Shares that amount of the debt shall be deemed repaid by Windflow UK Limited and Mr Iles' payment obligations for the New Preference Shares shall be discharged.*

**Resolution 2 (to be passed as an ordinary resolution) – Possible Further Private Placements**

To consider and, if thought fit, pass the following as an ordinary resolution in accordance with NZAX Listing Rules 7.3.1(a), 7.5 and 9.2.1:

*That the Company be authorised during the next 12 months, subject to compliance with all applicable laws and the constitution of the Company, to allot up to a further 10,000,000 New Preference Shares at a price per New Preference Share of \$0.50 each to David Walter Iles in addition to the New Preference Shares allotted under Resolution 1, in the event that Mr Iles agrees to subscribe for such further New Preference Shares. Payment of this issue price may be made by the reduction of debt owed to Mr Iles by the Company or its subsidiaries or in cash, as determined by the parties at the time of subscription.*

**Resolution 3 (to be passed as an ordinary resolution) – Approval for the purposes of the Takeovers Code**

To consider and, if thought fit, pass the following as an ordinary resolution in accordance with Rule 7(d) of the Takeovers Code:

*That any allotment of ordinary shares in the Company to David Walter Iles as a result of the conversion into ordinary shares of some or all of the New Preference Shares, which has the effect of making Mr Iles the holder or controller of an increased percentage of the voting rights in the Company is hereby approved in accordance with Rule 7(d) of the Takeovers Code as an exception to Rule 6 of the Takeovers Code.*

**D. Other Business**

To transact such other business as may properly be brought before the meeting in accordance with the Company's Constitution.

**NOTES:**

All shareholders are entitled to attend and all ordinary shareholders are entitled to vote (subject to voting restrictions set out in this Notice of Meeting) at the special meeting or to appoint a proxy (who need not be a shareholder of the Company) or corporate representative (in the case of a corporate shareholder) to attend the special meeting and vote on their behalf. If you wish, you may appoint "The Chairman of the Meeting" as your proxy or as an alternative to your named proxy. A proxy form is enclosed with this Notice. To appoint a proxy please complete, sign and return the enclosed proxy form to Link Market Services Limited, PO Box 91976, Auckland 1142 or Fax to +64 9 375 5990 in either case so that the Company receives the proxy form by 5:00 pm on 23 June 2014. The Chairman of the Meeting intends to vote any discretionary proxies in favour of the resolutions set out in this Notice of Meeting.

An ordinary resolution is a resolution that is approved by a simple majority of votes of those Shareholders entitled to vote and voting on the resolution.

**Restrictions on voting**

Pursuant to NZAX Listing Rule 9.3.1, none of David Walter Iles or any of his Associated Persons (as that term is defined in NZAX Listing Rule 1.7) shall be entitled to vote on Resolution 1 or Resolution 2 set out in this Notice of Meeting, as Mr Iles is a person whose effective control of the Company would be materially increased. Mr Iles and his Associated Persons are also precluded from acting as a discretionary proxy of any other shareholder entitled to vote on Resolution 1 or Resolution 2 but may vote on Resolution 1 or Resolution 2 as a proxy if voting in accordance with the appointing shareholder's express instructions.

Pursuant to Rule 17(2) of the Takeovers Code, none of David Walter Iles or any of his associates (as defined in Rule 4 of the Takeovers Code) shall be entitled to vote on Resolution 3 set out in this Notice of Meeting. Mr Iles and his Associated Persons are also precluded from acting as a discretionary proxy of any other

shareholder entitled to vote on Resolution 3, but may vote on Resolution 3 as a proxy if voting in accordance with the appointing shareholder's express instructions.

Holders of Preference Shares shall be entitled to receive notice of general meetings of the Company but not to vote thereat unless the business of a meeting includes consideration of a resolution which directly or adversely varies any of the special rights attached to the Preference Shares, in which case holders of Preference Shares may only vote in respect of such resolution and each such holder shall have one vote for each ordinary share into which the Preference Share held may at such time be converted by such holder. The Resolutions described in this Notice of Meeting allow Preference Shareholders to vote as the special rights attached to the Preference Shares are being varied by diluting their holding through the issue of the Preference Shares so both ordinary shareholders and Preference Shareholders may vote on the Resolutions.

Yours faithfully,  
for and on behalf of the Board of Directors

Geoff Henderson - Director/Chief Executive Officer

## EXPLANATORY NOTES

- 1 These explanatory notes relate to the Resolutions set out in the Notice of Special Meeting.

### Resolution 1: Private Placement

- 2 The Company entered into a Conditional Preference Share Deed on 9 April 2014 with David Walter Iles, under which Mr Iles agreed to subscribe for 2,000,000 New Preference Shares at a price per New Preference Share of \$0.50 each. The issue price payable by David Walter Iles for the allotment of the New Preference Shares shall be a debt in the amount that is Great British pounds sterling (GB£) equivalent of NZ\$1,000,000.00 (determined using the daily midrates quoted by the Reserve Bank of New Zealand on the date the final approval for the allotment is obtained by the Company). Payment of this issue price will be made by the reduction of the debt owed to Mr Iles by Windflow UK Limited under a loan for the Ludenhill approved project (*Debt*) made pursuant to a loan agreement between David Walter Iles and Windflow UK Limited dated 11 July 2012 as amended by a deed of variation dated 3 January 2014 which was established for Windflow UK Limited to invest in UK turbine projects (*Loan Facility*). Mr Iles provided a loan for the Ludenhill approved project to Windflow UK Limited (a wholly owned subsidiary of the Company) in the principal amount of £543,030.00 (as at 9 April 2014) under the Loan Facility.
- 3 The terms and conditions attaching to the New Preference Shares shall be on the same terms as the January Preference Shares. A summary of the terms and conditions of the New Preference Shares is set out in the table below:

<b>Key Features of the New Preference Shares</b>	
Securities Offered	Redeemable Convertible Preference Shares.
Final Maturity Date	The date falling on the fifth anniversary of the allotment date.
Preferential Dividends	Each New Preference Share shall confer on the holder a right (subject to the Company satisfying the solvency test and complying with all applicable laws) to receive a yield as the nominal amount of such New Preference Share at a percentage rate equivalent to 10% per annum of the Issue Price of each such New Preference Share, commencing 12 months after the allotment date.
Priority of New Preference Shares	The New Preference Shares have priority over Ordinary Shares, but shall rank behind all secured and unsecured creditors, upon winding up, dissolution or liquidation of the Company. The New Preference Shares shall rank pari passu with all existing Preference Shares.
Redemption Rights	The Company has the right, at its absolute discretion, to redeem the New Preference Shares for cash at any time during the period beginning 30 months after the allotment date and continuing through to the Final Maturity Date. The redemption price is the issue price plus any accrued (but unpaid) preferential dividends.
Conversion Rights	The Company and holders of the New Preference Shares each have a right at any time prior to the Final Maturity Date to convert the New Preference Shares into Ordinary Shares at their election. The holder conversion rate is one to one, and the Company conversion rate is three ordinary shares for every one New Preference Share. Any New Preference Shares which have not been redeemed or converted prior to the Final Maturity Date shall convert to Ordinary Shares on the Final Maturity Date.

- 4 The purpose of the New Preference Shares is to provide further capital to the Company to fund its short to medium term operations and to assist with the finance of its Turbine projects.
- 5 NZAX Listing Rules 7.3.1(a), 7.5 and 9.2.1 require shareholder approval by ordinary resolution because:
  - a) The private placement of the New Preference Shares does not meet the criteria to be exempt from shareholder approval (for example it is not part of a renounceable rights issue and exceeds 25% of the total number of the Preference Shares on issue); and
  - b) Mr Iles is an Associated Person and a Related Party as those terms are defined in the NZAX Listing Rules and will obtain a material increase in voting control of the Company if the holding of Preference Shares which he could have following such New Preference Share allotment were converted to ordinary shares.
- 6 Accordingly shareholder approval is required to allot up to 2 million New Preference Shares to Mr Iles.
- 7 In the event the shareholders do not approve the allotment of the 2,000,000 New Preference Shares to David Walter Iles, David has agreed to release Windflow UK Ltd absolutely from the payment of the Debt under the Ludenhill Loan and forgive the Debt absolutely.

#### **Resolution 2: Possible Further Private Placements**

- 8 If David Walter Iles is prepared to subscribe for further New Preference Shares during the next 12 months, whether by crediting the Loan Facility (i.e. by way of reducing one or more of the project loans as payment for the New Preference Shares) which has been established for Windflow UK Ltd to invest in UK turbine projects or otherwise (i.e. paying in cash), the Company wishes to have prior shareholder approval for the allotment of the New Preference Shares. This allotment or allotments will be up to 10,000,000 New Preference Shares and be subject to compliance with all applicable laws and the constitution of the Company.
- 9 This allotment or allotments will provide further equity for the Company. Mr Iles has signalled that he is prepared to support the Company as opportunities arise during the coming year for building turbines for the UK market and elsewhere, and other revenue-generating activities such as technology licensing. Issuing New Preference Shares will allow the Company to meet the short-term financing requirements of responding to these opportunities.
- 10 The terms and conditions attaching to the New Preference Shares shall be the same terms and conditions attaching to the January Preference Shares.
- 11 Please refer to paragraph 3 in the explanatory notes for the terms of the New Preference Shares.
- 12 The purpose of the New Preference Shares is to fund its short to medium term operations and to provide further capital to the Company to finance its Turbine projects. In the absence of this capital, the Company would most likely need to cease operating.
- 13 NZAX Listing Rules 7.3.1(a), 7.5 and 9.2.1 require shareholder approval by ordinary resolution because:
  - a) The private placement of the New Preference Shares does not meet the criteria to be exempt from shareholder approval (for example it is not part of a renounceable rights issue and exceeds 25% of the total number of the Preference Shares on issue), and
  - b) Mr Iles will obtain a material increase in voting control of the Company if the holding of Preference Shares which he could have following such New Preference Share allotment were converted to ordinary shares.

- 14 Accordingly shareholder approval is required to allot up to 10 million New Preference Shares to Mr Iles in the next 12 months. In the event the shareholders do not approve the allotment of New Preference Shares to Mr Iles, the Company may not be able to meet its short to medium term financing requirements to respond to the opportunities to construct further Turbines.

### **Resolution 3: Approval for the purposes of the Takeovers Code**

- 15 David Walter Iles currently holds 3,222,901 (15.6%) of the ordinary shares in the Company and 11,522,683 (77.5%) of the Preference Shares in the Company. Mr Iles will acquire 2 million New Preference Shares if Resolution 1 is approved, and up to a further 10 million New Preference Shares if Resolution 2 is approved and Mr Iles is prepared to subscribe for further New Preference Shares in the next 12 months.
- 16 Preference Shares may be converted into ordinary shares in the Company by either the holder of those Preference Shares or by the Company at any time from the date of allotment until five years following the date of allotment, at which point if the Preference Shares have not been converted, they will be redeemed by the Company. If some or all of Mr Iles' Preference Shares are converted into ordinary shares in the Company during such period, it is likely that Mr Iles' percentage of the ordinary shares would increase such that Mr Iles' voting rights would increase to or above the 20% limit on voting rights imposed by Rule 6 of the Takeovers Code.
- 17 Previously, the Company has obtained Shareholder approval by ordinary resolution on 4 December 2014 so that Mr Iles and/or the Company may convert the 11,522,683 Preference Shares currently held by Mr Iles as at the date of this Notice of Special Meeting to ordinary shares. This would increase Mr Iles' control of voting rights in the Company to between about 41.58% and 55.67% (based on current holdings and various conversion scenarios). This resolution seeks approval for Mr Iles in order to further increase his level of control of voting rights in the Company through the conversion of the New Preferences Shares.
- 18 Rule 7(d) of the Takeovers Code provides an exception to Rule 6, whereby a person may become the holder or controller of an increased percentage of voting rights (i.e. in this case via holding ordinary shares) in a code company by an allotment to a person of voting securities (i.e. in this case via holding ordinary shares) in the code company if the allotment has been approved by an ordinary resolution of the code company in accordance with the provisions of the Takeovers Code.
- 19 The identity of the allottee is David Walter Iles.
- 20 The ordinary shares will be allotted upon conversion of Preference Shares, which shall be at the conversion ratio of one ordinary share for each Preference Share if converted by the shareholder and if converted by the Company at the conversion ratio of:
- two ordinary shares for each March Preference Share; and
  - three ordinary shares for each January Preference Share and each New Preference Share.
- 21 Unless previously converted by the shareholder or the Company, the Preference Shares may be redeemed by the Company at any time from and including the date:
- 18 months after the allotment date for each March Preference Share; and
  - 30 months after the allotment date for each January Preference Share and each New Preference Shares,

and as many as can lawfully and properly be redeemed will be redeemed at the final maturity date, being the date five years after the allotment date, in each case at an amount equal to their issue price, with any balance being converted into ordinary shares at that time.

22 Subject to the assumptions below:

Maximum Conversion

- The maximum number of ordinary shares that could be allotted to Mr Iles upon conversion of all of his New Preference Shares is 36,000,000.
- Together with Mr Iles existing holding, this would represent up to 64,045,366 ordinary shares, representing 72.98% of the total voting securities in the Company following conversion of all the Preference Shares currently on issue and that could be allotted if Resolutions 1, 2 and 3 are approved.

23 The date used to determine the information regarding the maximum numbers and percentages of voting securities to be allotted following a conversion of preference shares is 30 May 2014 (the **calculation date**) and it is assumed that there is no change in the total number of voting securities on issue between the calculation date and the end of the allotment period (other than as a result of the allotment or the allotments).

24 While this scenario gives the maximum ordinary shareholding by Mr Iles (both in numbers of shares and percentage terms), there are other scenarios for converting the preference shares. Two of these are presented in detail in the enclosed Independent Adviser's Report (on pages 5 and 6):

- a minimum whereby Mr Iles' shareholding could increase to 44.70% (of 37,462,188 ordinary shares); or
- a mid-range whereby Mr Iles' shareholding could increase to 55.59% (of 39,119,947 ordinary shares).

25 In addition, it is possible that no preference shares are converted if they are all redeemed, in which case Mr Iles' ordinary shareholding would remain at 15.6%.

26 The assumptions upon which the above theoretical maximum is calculated are as follows:

- the number of existing ordinary shares is the number of ordinary shares on issue on the calculation date;
- that Mr Iles is allotted 2 million New Preference Shares if Resolution 1 is approved and 10 million New Preference Shares if Resolution 2 is approved (and, in each case, Resolution 3 is approved); and
- that the Company elects to convert all Preference Shares, including all New Preference Shares that could be allotted to Mr Iles if Resolutions 1, 2 and 3 are approved, which are assumed to be the only further Preference Shares allotted by the Company.

27 If Resolution 3 is approved, the allotment of voting securities (being Ordinary Shares) will be permitted under Rule 7(d) of the Takeovers Code as an exception to Rule 6 of the Takeovers Code. The reason for the allotment will be that either Mr Iles or the Company will have elected to convert some or all of Mr Iles' Preference Shares into Ordinary Shares in the Company, in accordance with the terms of issue of those Preference Shares.

28 Shareholders should read this Notice of Special Meeting in conjunction with the independent advisor report by Simmons Corporate Finance on the merits of the allotment of ordinary shares (voting securities) that could result from converting the New Preference Shares that are proposed to be allotted if Resolutions 1, 2 and 3 are approved.

29 Pursuant to Rule 16(g) of the Takeovers Code Mr Iles states that no arrangement that has been entered into between Mr Iles and any person other than the code company regarding the allotment, holding or control of the voting securities to be allotted.

- 30 The independent advisor report (Rule 18 of the Takeovers Code) is included with this Notice of Special Meeting.
- 31 The conversion of Mr Iles' Preference Shares will enable Mr Iles to increase his control of voting rights in the Company without having to make a formal offer to all shareholders in accordance with Rules 7(a) or 7(b) of the Takeovers Code. Currently, Mr Iles does not hold any significant ability to influence the outcome of shareholder voting. He cannot singlehandedly pass or block special resolutions (which require the approval of 75% of the votes cast by shareholders) or pass or block ordinary resolutions (which require the approval of more than 50% of the votes cast by shareholders). Following the conversion of Mr Iles' Preference Shares, Mr Iles' ability to influence the outcome of shareholder voting would change significantly.
- 32 The minimum possible shareholding level of 44.70% would enable Mr Iles to singlehandedly block special resolutions but not singlehandedly pass special resolutions. The maximum possible shareholding level of 72.98% would enable Mr Iles to singlehandedly pass or block ordinary resolutions and block special resolutions.
- 33 The ability of any shareholder to influence the outcome of voting on the Company's ordinary resolutions or special resolutions may be reduced by external factors such as NZAX Listing Rules, the Company's Constitution and the Companies Act 1993.
- 34 For further details in relation to Mr Iles' voting control, please refer to page 13 in the Independent Advisor Report.

#### **Directors Recommendation**

- 35 An increase in Mr Iles' majority voting control will give him the ability to influence decisions of the Company, particularly he could be able to control the voting on ordinary resolutions of shareholders.
- 36 However, the Directors recommend that shareholders approve Resolutions 1, 2 and 3 because the positive benefits of Mr Iles supporting the Company during the next 12 months by subscribing for New Preference Shares. These positive benefits include among other things raising further equity for the Company to allow the Company to meet its short term financing requirements and having a positive impact on the Company's financial position, which without the additional capital the prospects for the Company are limited. The Directors believe that this outweighs the negative aspects of those New Preference Shares potentially being converted to Ordinary Shares which would lead to Mr Iles having significant, and possibly majority voting control, in the Company. A negative aspect of approving Resolutions 1, 2 and 3 is that Mr Iles could be in a position to singlehandedly pass or block an ordinary resolution and block special resolutions of the Company, therefore he could exert his control on the Company.