

## **NOTICE OF MEETING**

### **Joint Shareholders Committee**

#### **Komiti Joint Shareholders**

**Date:** Tuesday 7 June 2022

**Time:** 1.00 pm

**Venue:** Tasman Council Chamber  
189 Queen Street, Richmond

**Zoom link:**

[https://us02web.zoom.us/j/87565901706?pwd=MUEQuEBDWS6npDeO3\\_B8BwP6W-JWQc.1](https://us02web.zoom.us/j/87565901706?pwd=MUEQuEBDWS6npDeO3_B8BwP6W-JWQc.1)

**Meeting ID:** 875 6590 1706

**Passcode:** 100147



## **MEMBERSHIP**

### **Members**

Tasman District Council  
Mayor T King  
Deputy Mayor S Bryant  
Cr B Dowler  
Cr K Maling  
Cr C Mackenzie  
Cr D Ogilvie

Nelson City Council  
Mayor R Reese  
Deputy Mayor J Edgar  
Cr M Courtney  
Cr B McGurk  
Cr G Noonan  
Cr R Sanson

(Quorum 6 members)

Contact Telephone: 03 543 8512  
Email: [robyn.scherer@tasman.govt.nz](mailto:robyn.scherer@tasman.govt.nz)  
Website: [www.tasman.govt.nz](http://www.tasman.govt.nz)



## **AGENDA**

- 1 OPENING, WELCOME, KARAKIA**
- 2 APOLOGIES AND LEAVE OF ABSENCE**

**Recommendation**

**That apologies be accepted.**

- 3 DECLARATIONS OF INTEREST**
- 4 CONFIRMATION OF MINUTES**

**That the minutes of the Joint Shareholders Committee meeting held on Tuesday 5 April 2022 and the minutes of the Extraordinary Joint Shareholders Committee meeting held on Tuesday, 17 May 2022, be confirmed as a true and correct record of the meeting.**

- 5 PRESENTATIONS**

Nil

- 6 REPORTS**

6.1 Holding Company - Progress Report 3..... 6

- 7 CONFIDENTIAL SESSION**

Nil

- 6 CLOSING KARAKIA**

## 6 REPORTS

### 6.1 HOLDING COMPANY - PROGRESS REPORT 3

**Decision Required**

<b>Report To:</b>	Joint Shareholders Committee
<b>Meeting Date:</b>	7 June 2022
<b>Report Author:</b>	Nikki Harrison, Group Manager Corporate Services; Mike Drummond, Group Manager - Finance
<b>Report Number:</b>	RJSC22-06-1

#### 1. Summary

- 1.1 The Tasman District Council and the Nelson City Council resolved to form a holding company for their investment in Port Nelson Limited and Nelson Airport Limited. This was consulted on and agreed as part of their respective 2021-2031 Long Term Plans. The role of the holding company is primarily as a funding vehicle for the port and airport companies.
- 1.2 The two councils together wholly own Port Nelson Limited and Nelson Airport Limited. As part of the proposal to incorporate a holding company, each council will transfer all their shares in Port Nelson Limited and Nelson Airport Limited to the holding company for \$8,446,000 in total being the face value of the current shares). The Purchase Price payable to the councils will be satisfied by a set-off against the subscription price for 84,460 ordinary \$100 shares in the Infrastructure Holdings Limited.

#### 2. Draft Resolution

#### **That the Joint Shareholders Committee receives the Holding Company - Progress Report 3 RJSC22-06-1.**

Recommendation to Nelson City Council and Tasman District Council

#### **The Council notes that:**

##### *Purpose*

- A. The purpose of these resolutions is to seek the Council's approval of the documents and transactions necessary to approve the:
  - a) Restructuring Proposals (including the Initial Share Issue); and
  - b) Financing Proposals (including the New Share Issue).
- B. The Restructuring Proposals, Initial Share Issue, Financing Proposals and New Share Issue are explained below.

##### *A new holding company for Port Nelson Limited and Nelson Airport Limited*

- C. Nelson City Council and Tasman District Council (together, the Shareholders) have together been investigating the incorporation of a holding company which they will own in equal

shares. The holding company will hold and administer investments in entities in which the Shareholders have a substantial interest for the benefit of the Nelson and Tasman regions, such as Port Nelson Limited (PNL) and Nelson Airport Limited (NAL).

- D. Nelson City Council and Tasman District Council through their Long Term Plan process and Joint Shareholders Committee (JSC), have each received and reviewed advice from Deloitte about operational synergies of holding investments, such as PNL and NAL, in a holding company, and tax structure options.
- E. The name approved for the holding company is Infrastructure Holdings Limited (IHL).
- F. The initial directors approved for IHL are Catherine Taylor, Paul Steere, Gerrard Wilson and Paul Zealand and an independent chairperson is being recruited.

#### *Restructuring Proposals*

- G. As part of the proposal to incorporate IHL, it is proposed that each of the Shareholders transfer all their shares in PNL and NAL to IHL (Share Sale) for \$8,446,000 in total (Purchase Price). The Purchase Price will be owed to the Shareholders in equal portions (being \$4,223,000 each). The Crown holds, and will continue to hold, one special “Kiwi Share” in NAL.
- H. The Purchase Price allocation is:
  - a) \$2,400,000 for the shares in NAL; and
  - b) \$6,046,000 for the shares in PNL.
- I. Nelson City Council and Tasman District Council will each subscribe for 42,230 ordinary shares in IHL (being 84,460 ordinary shares in total) (**Initial Shares**), at an issue price of \$100.00 per share (**Initial Share Issue**). The total subscription amount for the Initial Shares is therefore \$8,446,000 (**Initial Subscription Amount**), which is equal to the Purchase Price.
- J. Accordingly, the Purchase Price will be satisfied on a cashless basis by set-off against the Initial Subscription Amount.
- K. The sale of shares in PNL and NAL and the subscription for the Initial Shares will be referred to in these resolutions as the “**Restructuring Proposals**”.

#### *Financing Proposals*

- L. The New Zealand Local Government Agency Limited (**LGFA**) is a limited liability company owned by central government and local authorities. It was established to borrow funds and then on-lend those funds to local authorities and (now) council-controlled trading organisations (**CCTOs**) at lower margins than those local authorities and council-controlled organisations would otherwise pay.
- M. Currently, PNL and NAL service their debt requirements through ordinary bank borrowing from Westpac New Zealand Limited (**Westpac**). However, it is projected that PNL’s and NAL’s debt requirements and financing costs may increase over the next 10+ years to meet infrastructure-upgrade demands.
- N. Given the projected increase in PNL’s and NAL’s debt requirements and financing costs, IHL’s primary purpose is to operate as a treasury vehicle for, initially, PNL and NAL. To achieve this purpose, it is further proposed that (**Financing Proposals**) IHL will:
  - a) join the LGFA borrowing programme (**LGFA Accession**) as a CCTO, following which, IHL will be able to borrow funds directly from LGFA by issuing securities to LGFA;

- b) enter into borrowing and risk hedging facilities with Westpac, which is PNL's and NAL's current bank; and
  - c) on-lend amounts borrowed from the LGFA borrowing programme and Westpac to PNL and NAL under intra-group funding arrangements.
- O. Joining the LGFA borrowing programme will enable IHL to access cheaper core debt on behalf of PNL and NAL. As a "port company" under the Port Companies Act 1988, PNL is not permitted to join LGFA and NAL does not have the scale to make joining LGFA economical. It is considered that, once implemented, the Financing Proposals will deliver considerable financial benefits, including savings in financing costs for PNL and NAL and, consequently, increased dividend return to Nelson City Council and Tasman District Council (as the ultimate owners of PNL and NAL). Nelson City Council and Tasman District Council through their Long Term Plan process and the JSC have each received and reviewed advice from Deloitte about LGFA funding benefits.
- P. PNL and NAL will continue to require the flexibility offered by Westpac's transactional banking products. IHL will also enter into borrowing and risk hedging facilities with Westpac for working capital requirements and risk-management (such as interest-rate hedging).

*The LGFA Accession and Westpac facilities*

- Q. LGFA and Westpac will require certain credit support as conditions to the LGFA Accession and the availability of the Westpac facilities. Such credit support will include:
- a) a subscription from the Shareholders for an agreed amount of uncalled and unpaid equity capital in IHL (further details are described below);
  - b) IHL, PNL and NAL will each cross-guarantee each other's obligations to LGFA, Westpac as lender under borrowing facilities and Westpac as counter-party to risk-management facilities (together, the Finance Parties); and
  - c) IHL, PNL and NAL will each grant general security over all of their personal property in favour of the Finance Parties. In the case of IHL, this will include security over its right to call for uncalled and unpaid equity capital.
- R. As mentioned above, it will be a condition to the LGFA Accession and the availability of the Westpac facilities that the Shareholders subscribe for, and IHL issues to the Shareholders (**New Share Issue**), a further 1,165,000 ordinary shares each (totalling 2,330,000 ordinary shares) in IHL (**New Shares**) for an issue price of \$100.00 per share. The total amount payable for the New Shares will therefore be \$233,000,000 (**Issue Amount**). The Issue Amount will remain uncalled and unpaid until such time as the directors of IHL make a call on the New Shares for the Issue Amount.

*Shareholder approvals*

- S. The Restructuring Proposals and the Financing Proposals will require the approval of the Shareholders as:
- a) the proposals are, or may be, "major transactions" (as defined in section 129 of the Companies Act 1993 (Act));
  - b) the Initial Share Issue and the New Share Issue require the agreement of IHL's entitled persons (as that term is defined in the Act) for the purposes of section 107(2) of the Act. The only entitled persons of IHL will be the Shareholders; and



- c) Nelson City Council and Tasman District Council (as the shareholders of IHL) must consent, for the purposes of section 50 of the Act and for all other purposes, to becoming the holder of the Initial Shares and the New Shares.
- T. Accordingly, IHL's board of directors will, at the relevant times, separately request that Tasman District Council and Nelson City Council (as shareholders and entitled persons of IHL) confirm and approve IHL's entry into, execution and performance, of the:
- a) Restructuring Proposals (including the Initial Share Issue); and
- b) Financing Proposals (including the New Share Issue),
- by separate unanimous resolutions and entitled persons' agreements. The unanimous resolutions and entitled persons' agreements for the Restructuring Proposals and the Financing Proposals are together referred to as the **"Unanimous Shareholder Resolutions and Entitled Persons' Agreements"**.

*Next steps*

- U. In order to incorporate IHL and give effect to the Restructuring Proposals, the Shareholders will need to:
- a) register IHL as a limited liability company on the New Zealand Companies Office and each complete the Companies Office requirements in relation to the incorporation of IHL (such as shareholder consent forms) (**Companies Office Forms**);
- b) appoint directors to the board of IHL (including an independent chairperson);
- c) cause IHL to adopt the constitution in the form attached (the **Constitution**);
- d) enter into a shareholders' agreement (which will include the subscription provisions for the Initial Shares) with IHL, in the form attached (the **Shareholders' Agreement**);
- e) enter into a sale and purchase agreement with IHL relating to the transfer of shares in PNL and NAL in the form attached (the **Sale and Purchase Agreement**);
- f) execute and deliver the share transfer forms (in the form attached) in relation to the Sale and Purchase Agreement (the **Share Transfer Forms**); and
- g) any other documents necessary or desirable in connection with the Restructuring Proposals.

The Companies Office Forms, Shareholders' Agreement, Sale and Purchase Agreement, Share Transfer Forms and any other documents captured by paragraph U.g above, are together referred to as the **"Restructuring Documents"**, and the transactions contemplated by the Restructuring Documents are referred to as the **"Restructuring Transactions"**.

- V. In order to give effect to the Financing Proposals, each of the Shareholders will need to enter into:
- a) a subscription agreement (in the form attached) with IHL, under which the Shareholders will subscribe for the New Shares (Subscription Agreement);
- b) (as part of the LGFA Accession) accession deeds to the multi-issuer deed and notes subscription agreement (which Tasman District Council and Nelson City Council are each already a party to) (Accession Deeds); and
- c) any other documents necessary or desirable in connection with the Financing Proposals.

The Subscription Agreement, the Accession Deeds and any other documents captured by paragraph 0 are together referred to as the “**Financing Documents**” and the transactions contemplated by the Financing Documents are referred to as the “**Financing Transactions**”.

*Documents*

- W. The Council tables the most recent drafts of the Restructuring Documents, the Subscription Agreement and the Unanimous Shareholder Resolutions and Entitled Persons’ Agreements.
- X. The Council has not tabled copies of the Accession Deeds because they are not yet available for the Council to review and approve. However, the Accession Deeds will be based on the standard form for accession deeds scheduled to the LGFA Multi-Issuer Deed and Notes Subscription Agreement respectively.

**The Council resolves that:**

- 1. the Council consents, for the purposes of section 50 of the Act and for all other purposes, to being the joint owner in equal shares of the Initial Shares and the New Shares;
- 2. the form of the Constitution be approved, and the Shareholders will cause IHL to adopt the Constitution;
- 3. the Restructuring Documents and the Restructuring Transactions (including, specifically, the Initial Share Issue) are approved, and any pre-emptive rights available to the Shareholders in relation to the Share Sale are to be waived in the Sale and Purchase Agreement;
- 4. the Financing Documents and the Financing Transactions (including, specifically, the New Share Issue) are approved;
- 5. the forms of the Unanimous Shareholder Resolutions and Entitled Persons’ Agreements are approved;
- 6. the Council enters into and, following execution, delivers and performs its obligations under, each of the Restructuring Documents and the Financing Documents and that these documents may be executed by:
  - a) (in the case of agreements) the Chief Executive; and
  - b) (in the case of deeds) two elected members,on behalf of the Council, subject to any minor amendments cleared by both Tasman District Council’s and Nelson City Council’s legal advisors;
- 7. when requested to do so by the board of IHL, the Chief Executive is authorised to sign the Unanimous Shareholder Resolutions and Entitled Persons’ Agreements on behalf of the Council, subject to any minor amendments cleared by both TDC’s and NCC’s legal advisors;
- 8. the Chief Executive is authorised on behalf of the Council to, subject to clearance by both Tasman District Council’s and Nelson City Council’s legal advisors:
  - a) approve any further minor amendments to the Restructuring Documents, the Financing Documents and the Unanimous Shareholder Resolutions and Entitled Persons’ Agreements prior to their execution; and
  - b) enter into, execute, and deliver such other agreements, instruments, notices, communications, and other documents; and
  - c) do such other things,

in connection with the Restructuring Documents and the Restructuring Transactions, the Financing Documents and the Financing Transactions, and the Unanimous Shareholder Resolutions and Entitled Persons' Agreements, as the Chief Executive may consider necessary.

### **3. Purpose of the Report**

To recommend to Nelson City and Tasman District Council approval of:

- 3.1 Infrastructure Holdings Limited constitution and Shareholders Agreement, incorporating changes since the 5 April Joint Shareholders Committee.
- 3.2 The Capital structure of Infrastructure Holdings Limited including the level of uncalled capital, share valuation and capital release (if any);
- 3.3 The Councils transfer of their shareholdings in Port Nelson Limited and Nelson Airport Limited to Infrastructure Holdings Limited;
- 3.4 The Councils in exchange for their shareholdings in Port Nelson Limited and Nelson Airport Limited the Councils subscribing for fully paid shares in Infrastructure Holdings Limited;
- 3.5 The accession of Infrastructure Holdings Limited to the LGFA's borrowing programme.

### **4. Background and Discussion**

- 4.1 The Tasman District Council and the Nelson City Council resolved to form a holding company for their investment in Port Nelson Limited and Nelson Airport Limited. This was consulted on and agreed as part of their respective 2021-2031 Long Term Plans. The role of the holding company is primarily as a funding vehicle for the port and airport companies.
- 4.2 Overall dividends back to the councils will increase due to the financial funding cost savings as outlined in the proposal. The actual level of the group dividend would be a decision for the Infrastructure Holdings Limited board.
- 4.3 The Working Group recommend that the ongoing administration, treasury, and governance costs for Infrastructure Holdings Limited are funded from the subsidiary dividend streams. The borrowing costs would be passed directly through to the subsidiaries in line with their advances from Infrastructure Holdings Limited.
- 4.4 The impact on the Infrastructure Holdings Limited first year dividends will be impacted on how the business case and setup costs (which are operational not capital) are funded. They can be either recovered in one year or loan funded and spread forward (due to ongoing benefits).
- 4.5 The constitution and shareholders agreement were considered at the Joint Shareholders Committee on 5 April 2022 and amended documents incorporating the changes requested along with minor drafting amendments have been made. The shareholders agreement now includes the subscription provisions for the Shares.

#### **Process to date**

- 4.6 The Working Group is a technical and administrative group formed to run the implementation and set up project for Infrastructure Holdings Limited.
- 4.7 The Working Group is guided by the principles document and has developed the financials and other foundation documents with independent advice. These documents are presented back to the Nelson Airport Limited and Port Nelson Limited boards and the Joint Shareholders Committee and the two Councils.
- 4.8 The Working Group comprises - Mike Drummond (Tasman District Council), Nikki Harrison (Nelson City Council), Mark Thompson (CEO Nelson Airport Ltd), Hugh Morrison (CEO Port Nelson Ltd), Simon Orr (CFO Nelson Airport Ltd) and Daryl Wehner (CFO Port Nelson

Ltd). Governance oversight comes from the JSC and from the NAL/PNL boards through reporting back.

- 4.9 Role of Simpson Grierson – legal advisor on financing arrangements
- 4.10 Role of PWC – treasury advisor for the setup of Infrastructure Holdings Limited
- 4.11 Role of Pitt and Moore – preparation of the Infrastructure Holdings Limited constitution and shareholders agreements.
- 4.12 Role of DLA Piper – review of the IHL constitution and shareholders agreements.

### **Constitution and Shareholders Agreement**

- 4.13 Updated marked up versions of the Infrastructure Holdings Limited **Constitution** and the **Shareholders Agreement** are attached to this report (**Attachments 1, 2 and 3, 4**). These versions have been updated with feedback from Councillors and legal advisors since the 5 April 2022 Joint Shareholders Committee. DLA Piper has provided its formal legal sign-off about the Constitution and Shareholders Agreement (**Attachment 5**).
- 4.14 Attached are the Shareholder consent forms (**Companies Office Forms**) (**Attachment 6**) required to register Infrastructure Holdings Limited with the Companies Office.

### **Agreement for sale and purchase of shares/Share Transfer Forms**

- 4.15 To affect the setup, the councils need to transfer their shareholdings in Port Nelson Limited and Nelson Airport Limited to Infrastructure Holdings Limited. The councils, in exchange for their shareholdings in Port Nelson Limited and Nelson Airport Limited, are subscribing for fully paid shares in Infrastructure Holdings Limited. The **Agreement for Sale and Purchase of Shares (ASAP)** in Port Nelson Limited and Nelson Airport Limited between the councils and Infrastructure Holdings Limited is included (**Attachment 7**). The **Share Transfer Forms** for each of the councils are included (**Attachment 8**).

### **Shadow credit rating**

- 4.16 A credit rating is a quantified assessment of the creditworthiness of a borrower in general terms or with respect to a financial obligation. PwC has assessed the financial profile of the group and determined a shadow credit rating. PwC has determined an appropriate target or minimum credit rating for the group is no less than a BBB- rating out to 10 years. This investment grade minimum rating considers the nature of the group's assets (being primarily infrastructure) and the projected future capital requirements. This target rating is consistent with similar organisations in New Zealand.
- 4.17 To assist with determining the appropriate uncalled capital facility level and to give shareholders comfort in the future financial profile and debt capacity of the underlying subsidiaries, a shadow credit rating was undertaken by PwC which also informs the design of the treasury framework and Group treasury function.

### **Capital release**

- 4.18 The proposed structure of the Financing Transactions is such that there will not be a capital release and therefore there are no tax issues requiring a binding tax ruling.

### **Uncalled capital subscription agreement**

- 4.19 The councils need to agree to subscribe for a level of uncalled capital in Infrastructure Holdings Limited (**Attachment 9**).

*Uncalled capital not a guarantee*

- 4.20 Advice from Simpson Grierson confirms that the proposed uncalled capital facility as required as a condition to joining LGFA's debt programme, is not a prohibited guarantee under section 62 of the Local Government Act 2022 (**Attachment 10**).
- 4.21 The Local Government Act prohibits local authorities from guaranteeing the obligations of council-controlled trading organisations (such as Infrastructure Holdings Ltd). However, indirect credit support can be provided by Tasman District Council and Nelson City Council through the proposed uncalled capital structure. That credit support will be subject to a security interest granted in favour of the Security Trustee for the benefit of the creditors.
- 4.22 The use of uncalled capital is not new and predates the LGFA. Dunedin City Council and its CCTO, Dunedin City Holdings Limited (DCHL), have had an uncalled capital facility in place since DCHL's incorporation in 1996. Its public accounts show that the amount of uncalled capital has been regularly added to over the years, including after the enactment of the Local Government Act 2002.

*Financial Structure – uncalled capital*

- 4.23 The Group debt level on 1 July 2022 (establishment date for Infrastructure Holdings Limited) will comprise \$131 million including liquidity and working capital facilities.
- 4.24 Looking forward to June 2026, PwC have assessed a debt level of \$146 million. This would comprise \$100 million of core debt (LGFA) and \$46 million of working capital and liquidity (Multiple Option Credit Line - Westpac). Actual debt levels will vary between July 2022 and June 2026 based on the Group's operational requirements.
- 4.25 The Uncalled Capital Facility (UCF) must provide for the total secured liabilities of the Group. This will ensure that in the event of default, all lenders secured by the UFC will have their outstanding financial obligations covered. Setting the UCF at the same level estimated debt level (\$146 million) may constrain the Group from undertaking investments which could otherwise be approved under the appropriate council and governance oversight.
- 4.26 Consistent with good practice, the treasury advisors have specified a contingent debt level that ensures Port Nelson and Nelson Airport have the debt capacity and flexibility to manage financial and operation requirements over the period to June 2026. Financial and operation requirements can include variations to the debt forecast, treasury risk management activity and insurance contingencies.
- 4.27 It is good practice for an organisation to consider its debt capacity within a financial framework. Importantly the debt capacity and uncalled capital amount is consistent with the target credit profile of the Group (i.e., no less than BBB-).
- 4.28 For the period to June 2026, the maximum required debt capacity is estimated at \$233 million to maintain not less than a BBB- credit profile.
- 4.29 The Group's contingency debt is set at a maximum of \$160 million. Access to the full contingency debt in the period to June 2026 would be impacted by the need to maintain a BBB- credit profile for each financial year.

- 4.30 The maximum estimated debt contingency of the Group is assessed on a year-by-year basis. In the financial modelling it is not uniform across the 4-year period to June 2026. For example, 2023 the debt contingency cap is \$47 million as highlighted in the chart below:



- 4.31 Based on maintaining a BBB- (investment grade) credit profile, the Group could support a debt level of up to \$233 million during the 2025/26 financial year. The Uncalled Capital Facility has been set at a level to facilitate this. The facility amount is structured as:
- The projected total debt facility (i.e., core debt, working capital and liquidity needs) of the group over the UCF term
  - Calculation of the secured liability amount for the potential future exposure of risk management instruments
  - A contingency buffer, that considers the debt capacity metrics consistent with the target credit profile
- 4.32 The UCF is not an authorisation of Group debt levels. Group debt levels are controlled and approved through the Infrastructure Holdings Ltd Statement of Intent approval process and through the groups 10-year business planning process.
- 4.33 The uncalled capital in Infrastructure Holdings Ltd is treated as a contingent liability in both councils' Annual Reports. It is not recorded on the council's balance sheets and does not impact the ability of either council to borrow. The port and airport debt levels are already considered when Standard and Poors arrive at the councils' credit rating therefore this proposal will not impact the councils' credit rating.

**Shareholders' liability for calls on uncalled capital** 4.34 Each council is only liable for calls made on its own share of uncalled capital. The Councils will not be providing a direct undertaking in favour of Infrastructure Holdings Ltd creditors. It is Infrastructure Holdings Ltd that benefits from the ability to call up the uncalled capital amounts.

- 4.35 If a shareholder does not pay a call or only partly pays a call the other shareholder is not liable for any shortfall. The unpaid amount however remains as a debt owing between the shareholding council and Infrastructure Holdings Ltd. Infrastructure Holdings Ltd can then proceed to recover the debt from that shareholder.
- 4.36 Any shareholder that does not pay a call loses its voting rights in relation to those shares. This means that the remaining shareholder has a majority shareholding in the company and can act accordingly.

## Funding Negotiations and Requirements

4.37 The funding for Infrastructure Holdings Ltd. Involves negotiations with the Local Government Funding Agency Ltd (LGFA) and Westpac bank as the current banker to both subsidiaries. These negotiations are on-going and cannot be completed until Infrastructure Holdings Limited is incorporated.

4.38 Key features in the proposed funding arrangements are:

- a) **Consistency of Terms** – for all the Group companies and for all lenders.
- b) **Swap Transactions** - The ability to enter into swap transactions (Interest Rate and currency). these will occur as part of the treasury function in Infrastructure Holdings Ltd.
- c) **Core Debt** – Access to the LGFA including long term funding for the Group’s core debt requirements.
- d) **Working Capital** – The ability to introduce one or more banks for working capital/transactional banking requirements
- e) **Borrower Notes.** One of the features that make up the LGFA funding arrangements is the requirement for LGFA borrower notes. That arrangement is consistent with those the LGFA has with both councils and all other borrowing Local Authorities and CCO’s.

Under the borrower notes 2.5% of the amount borrowed is lent back to the LGFA by way of borrower notes. This requirement strengthens the LGFA balance sheet. These borrower notes pay interest and are repaid by the LGFA when the borrowings are repaid.

- f) **Borrowing.** Borrowings from the LGFA are interest only and are repaid in full at the end of the term. This is typically by re-borrowing the funds again from the LGFA. The level of re-borrowing will depend on the cash flow needs of Infrastructure Holdings Ltd. Like both councils, Infrastructure Holdings Ltd can borrow earlier (prefund) any upcoming bank or LGFA repayments.

Both Westpac Bank and the LGFA monitor and provide prudential oversight of Infrastructure Holdings Ltd for their respective borrowings. This oversight is standard for any lender.

## Financial and Treasury Framework

4.39 The financial and treasury framework has been designed to comply with the requirement of the LGFA, Westpac Bank and to give the shareholders comfort around the current and future financial risk profile of the Group. The framework uses recognised standards for financial profiles and debt capacity considerations.

**Financial benefits** 4.40 The financial benefits have been modelled for ten years through to 2032 based on the projected capital programs of the underlying subsidiaries and the differential between bank funding and rates from LGFA (approximately a 1%-1.5% saving on borrowing costs). These total uninflated savings (over and above any additional costs) range from \$822,000 per annum in the first year through to just under \$2 million per annum in 2032. These savings are based on accessing LGFA borrowings as an AA rated entity (based on the councils’ current credit ratings). Additional costs include Infrastructure Holdings Limited director fees, audit fees and treasury advice.

4.41 The ability to access funding through the LGFA allows the Group to diversify funding sources by accessing not just bank funding. It allows the Group to spread and smooth the



funding risk and borrow for longer periods of up to 10 years compared with relatively short-term bank facilities (with associated commitment fees). Lengthening the funding profile is more appropriate for these infrastructure businesses which are investing in long term assets.

- 4.42 LGFA have been operating since 2012 and has shown its ability to successfully raise lower cost debt even during periods of market turbulence.
- 4.43 A proposed banking sweep within the three entities in the group will allow better working capital management and interest cost savings.

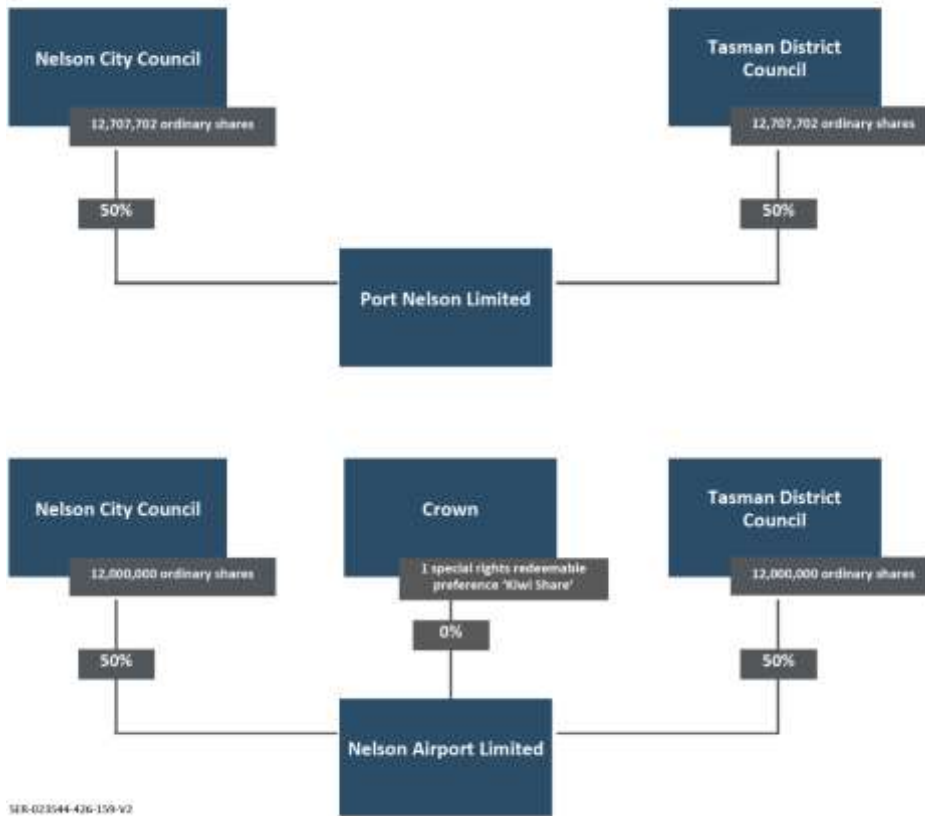
### **Financial risks**

- 4.44 The financial risks to the councils are seen primarily as the risk that the uncalled capital or a portion thereof is called. The likelihood of a call on the shares is considered remote and would mean the Group has got into significant financial difficulty as a whole. If that occurred, Council would have had warning and so would be able to take corrective actions. Both the holding company and the subsidiaries both have professional boards. These boards have fiduciary and oversight obligations to shareholders and are required to act as soon as a risk arose.
- 4.45 Under the current arrangements, in the officer's view if either of the port or the airport got into financial difficulties due to an unforeseen event then both shareholders would be highly likely to step in and provide additional equity funding. These companies are considered strategic assets of the councils and for the region. Standard and Poors currently recognise the port and airport borrowings as a contingent liability of each council when assessing the overall council credit rating.
- 4.46 The proposed uncalled capital structure formalises this and further reduces the risk to both councils by leveraging the Group before there can be a call on shareholders.
- 4.47 The impact of the General Security Arrangement (GSA) is that the lenders will look to the Group first before the shareholders. The lenders cannot make a call on uncalled capital. That decision is one only the board of Infrastructure Holdings Ltd can initiate.
- 4.48 The Councils influence on, and control of the Group is through the Statement of Expectations, Statement of Intent, and engagement with the Infrastructure Holdings Limited Board.
- 4.49 The Local Government Act sets the framework for engagement and oversight for both the shareholding Councils and the public. Infrastructure Holdings Limited will prepare a Group Statement of Intent and through this process the councils will have oversight of the capital works programme and the projected level of debt in the Group.

### **Group structure**

- 4.50 The proposed corporate structure for Infrastructure Holdings Limited, the Port and Airport is set out in **Attachment 11**. The financing structure diagram is set out in **Attachment 12**. The key documents are listed in **Attachment 13**.
- 4.51 A comparison document showing the current structure of the Port Nelson Ltd, Nelson Airport Ltd and the proposed Infrastructure Holdings Ltd and governing documentation comparison has been provided by the Working Group advisors Pitt and Moore (**Attachment 14**).

**Existing structure**



**Proposed structure post share transfer to holding company**



4.52 The new corporate structure that comes into effect on the establishment of Infrastructure Holdings Limited provides a different but equivalent way for both councils to provide oversight and influence over the port and airport operations.

4.53 The reporting to the councils remains on the same basis as existing reporting to the Joint Committee and to the Joint Shareholders Committee. The responsibility for the reporting

moves to Infrastructure Holdings Limited. In practice both the subsidiaries will be present to update the shareholders on their results and respond to queries.

- 4.54 The major transactions and no surprises arrangements currently in place simply transfer to the holding company. While the holding company will not be involved in the day-to-day operations of the port or the airport it will provide high-level oversight of their activities. As in the past, major transactions will still require shareholder approvals and would be included in the holding company consolidated SOI.
- 4.55 The RACI Matrix set out below shows how the revised arrangement will work in terms of who is Responsible, Accountable, Informed, and Supportive of the oversight and other processes.

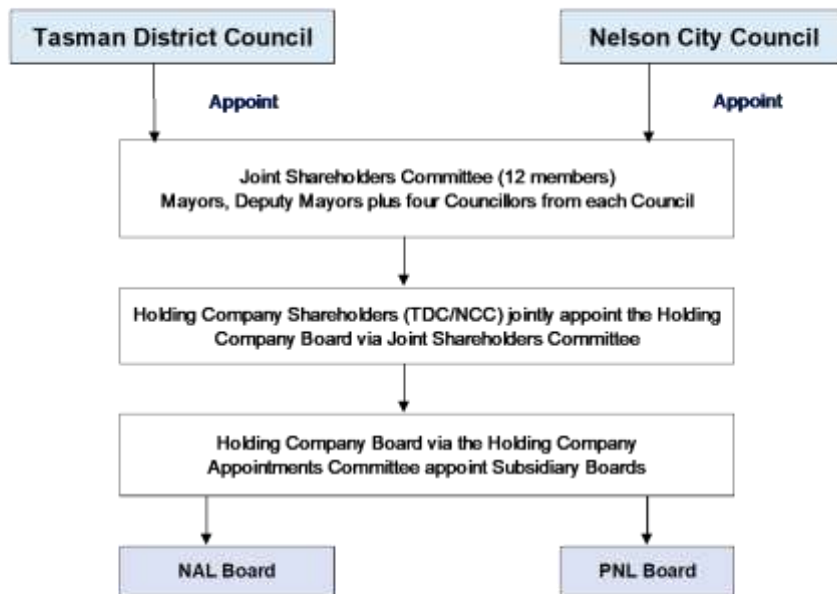
RACI Chart for Holding Company								
TASKS	ROLES							
	NAL BOARD	PNL BOARD	HOLD CO BOARD	COUNCIL OFFICERS	JSH	JC	NCC Full Council	TDC Full Council
SOE				R		A		
Port SOCI development	R	R	A					
NAI SOI development	R	R	A					
Holding Co consolidated SOI			R A	S	A	A		
<sup>(2)</sup> Regular REPORTING (Includes Briefings)	S	S	A	I	I	I		
HY Report	S	S	A	I	R			
ANNUAL Report	S	S	R	I	R			
Hold Company AGM	S	S	R	I	I		I	I
Quarterly Presentation	S	S	R		R	I		
Capital prog 0-5 yr	R	R	A		I	I <sup>(1)</sup>		
Uncalled CAP Approval	S	S	R	I	A		A	A

R = Responsible    A = Accountable    C = Consult    I = Inform    S = Supportive  
 (2) Holding Company Commercial Briefing includes Port and Airport Briefings  
 (1) As part of the briefings

### Director appointments

- 4.56 As set out in the chart below, both councils control the director appointments to the Infrastructure Holdings Ltd board. In turn they will have considerable influence on the subsidiary boards through their involvement in the subsidiary director selection process. All the boards within the group will be made up of professional directors. Director selection will be based on having the right skills mix on each board.

**BOARD APPOINTMENT PROCESS**



- (1) Council Joint Appointment Policy applies to appointments to Holding Company Board.
- (2) Holding Company Appointments Policy apply to their appointment to Subsidiary Boards.

**5. Options**

<b>Option 1: Notes the transition work plan (Attachment 15) and agrees to the Restructuring and Financing Documents with no or minor edits</b>	
Advantages	<ul style="list-style-type: none"> <li>• Allows the work plan to proceed in a timely way and in the manner agreed by the Working Group and as reviewed by the two councils' external advisors.</li> <li>• The Transaction Documents in their current forms meet the statutory and legal requirements to give effect to the holding company proposal.</li> <li>• The timeline will allow the company to be established and commence funding in the first quarter of the 2022-23 financial year.</li> <li>• The proposed timeline ensures that Infrastructure Holdings Limited is able to take advantage of the reduced funding costs for the Group available through the August 2022 LGFA tender round.</li> </ul>
Risks and Disadvantages	<ul style="list-style-type: none"> <li>• The Restructuring and Financing Documents may not align with all Councillor preferences making changes at a later date more costly and likely to derail the project timelines.</li> <li>• Given the wide range of views there may be insufficient support when the proposal is considered by both councils independently.</li> </ul>

**Option 2: Notes the transition work plan and instructs staff to engage in further negotiations to affect changes to the Restructuring and Financing Documents**

Advantages	<ul style="list-style-type: none"> <li>It would allow time for further negotiations between the parties to resolve contentious matters</li> </ul>
Risks and Disadvantages	<ul style="list-style-type: none"> <li>The Restructuring and Financing Documents may not align with all Councillor preferences making changes at a later date more costly and will likely derail the project timelines. This would mean the financial advantages to the Group and the council shareholders would be delayed.</li> <li>Delays in completing the work programme will result in increased costs in staff time and external advisor support.</li> <li>Delay will cause the establishment of the holding company is not completed prior to the local body elections in October 2022.</li> </ul>

**6. Important considerations for decision making**
**6.1. Fit with Purpose of Local Government**

The Local Government Act 2002 states that the purpose of local government is to enable democratic local decision-making and action by, and on behalf of, communities.

The recommendations are required to give effect to the holding company formation decision contained within both councils Long Term Plans. Those plans are the result of democratic local decision-making.

**6.2. Consistency with Community Outcomes and Council Policy**

The recommendations are not inconsistent with either Councils' policy and are necessary to give effect to the previous decisions to form the holding company.

This recommendation is consistent with both the Nelson City Council and Tasman District Council Community Outcomes of:

- Our infrastructure is efficient, cost effective and meets current and future and;
- Our region is supported by an innovative and sustainable economy

**6.3. Risk**

The decision to form the proposed holding company has been previously consulted on. The strategy of both councils is focused on ensuring the holding company is formed as envisaged and the LGFA funding benefits are captured for the benefit of the port and airport companies and ultimately the council shareholders.

There is a low risk associated with the recommendations.

The following are the main identified project risks:

- LGFA resourcing and response times. Staff understand that the LGFA is heavily involved in the Three Waters reform;

- The immature nature of the LGFA process causing delays. LGFA lending to CCTOs is a new process. Staff understand our proposal is only the third such proposal for the LGFA. Likewise, although security groupings are not new for Westpac, working with the LGFA on such a proposal is new; and
- Other risks set out in the Options section of this report.

#### **6.4. Financial impact**

It is currently proposed that the holding company setup, governance, and administration costs will be funded via the dividend streams from the subsidiary companies. Costs of borrowing will be passed directly through to the subsidiary companies.

The proposal has a positive financial impact on both councils as it will reduce borrowing costs for the Group through accessing long-term funding from the LGFA. This is estimated to reduce Group borrowing costs by approximately 1%-1.5% per annum. This reduction in costs should translate to increased dividends to shareholders.

Staff and advisors have assessed the financial risks from issuing the uncalled capital as remote. The financial impact of any call on uncalled capital would not exceed amounts the councils would have contributed directly to the subsidiary companies under the current arrangements. Due to the financing of the Group as a whole, the likelihood of the council shareholders being required to contribute capital should an event occur has been reduced.

#### **6.5. Degree of significance and level of engagement**

This matter is of low to medium significance because it is formalising documentation required to set up the holding company. The proposal to form the holding company was consulted on as part of the 2021-2031 Long Term Plan consultation by both councils. Following that consultation both councils agreed to the formation of the holding company primarily as a funding vehicle for the port and airport companies. Further engagement with the community is not required. Elected members can rely on their knowledge of the views and preferences of the community when making these decisions.

#### **6.6. Climate Impact**

These decisions have no climate impact.

#### **6.7. Inclusion of Māori in the decision-making process**

No engagement with Māori has been undertaken in preparing this report.

#### **6.8. Delegations**

The Joint Shareholders Committee has the following delegations to consider matters relating to jointly owned Council Controlled Organisations. It also has the power to decide or to make a recommendation to the Councils on this matter.

*Areas of Responsibility:*

- *All matters relating to jointly owned Council Controlled Organisations and Council Controlled Trading Organisations, including statements of intent, statements of corporate intent, half yearly reports, the appointment of directors and setting of directors' fees.*

*Powers to Decide:*

- *All matters relating to jointly owned Council Controlled Organisations and Council Controlled Trading Organisations, including statements of intent, statements of corporate intent, half yearly reports, the appointment of directors and setting of directors' fees.*

*Powers to Recommend:*

*The committee has the power to make a recommendation to both the Tasman District and the Nelson City Council on this matter subject to an equivalent resolution being adopted by the other Council.*

## 7. Conclusion and Next Steps

- 7.1 The approval of the Restructuring and Financing Documents as proposed is necessary to establish the holding company and give effect to the decision in both councils' Long Term Plans 2021-2031.
- 7.2 The proposed financial arrangements including the use of uncalled capital are appropriate in the circumstances and do not increase the risk that either council will need to contribute additional equity should the port or airport find themselves in financial difficulty.
- 7.3 To meet the timeline in the transitional arrangements and to lock in the financial benefits through reduces lending costs, the holding company needs to be established as soon as practicable.
- 7.4 The proposed structure does not reduce the level of influence and control able to be exercised by the councils. Current reporting arrangements will remain in place.
- 7.5 Once approved by the JSC, recommendations will go to each council to approve the Infrastructure Holdings Limited Restructuring and Financing documents. Both councils must approve these documents for the holding company proposal to proceed further.

## 8. Attachments

1. [⇒](#) Constitution of Infrastructure Holdings Ltd - clean copy (*Under Separate Cover*)
2. [⇒](#) Constitution of Infrastructure Holdings Ltd - Marked up copy (*Under Separate Cover*)
3. [⇒](#) Draft Shareholders Agreement - clean copy (*Under Separate Cover*)
4. [⇒](#) Draft Shareholders Agreement - marked up copy (*Under Separate Cover*)
5. [⇒](#) DLA Piper signoff of constitution and SHA (*Under Separate Cover*)
6. [⇒](#) Shareholder Consent Forms (*Under Separate Cover*)
7. [⇒](#) Agreement for Sale and Purchase of Shares (*Under Separate Cover*)
8. [⇒](#) Share Transfer Forms (*Under Separate Cover*)
9. [⇒](#) Uncalled Capital Subscription Agreement (*Under Separate Cover*)
10. [⇒](#) Legal Advice on Uncalled Capital (*Under Separate Cover*)
11. [⇒](#) Proposed Corporate Structure Diagram (*Under Separate Cover*)
12. [⇒](#) Proposed Financing Structure Diagram (*Under Separate Cover*)

- 13. [↔](#) Restructuring and Financing of PNL and NAL (*Under Separate Cover*)
- 14. [↔](#) Pitt and Moore - Comparison of Corporate Structure/Constitutions (*Under Separate Cover*)
- 15. [↔](#) Transition Work Plan (*Under Separate Cover*)