

DECISION (excerpt from the confidential minutes):

7.2 Holding Company Progress report No 1

Moved Mayor Reese/Mayor King

JSC22-02-1

That the Joint Shareholders Committee:

- 1. Receives the report Holding Company Progress report No 1; and***
- 2. Notes the project plan and timelines contained in Attachment 1 to the agenda report; and***
- 3. Approves the draft Holding Company Principles as set out in Attachment 2 to the agenda report, subject to the following amendments and feedback***
 - a. Clarification of the specific objectives and lines of responsibility***
 - b. In finalising those matters, officers respond to the feedback, including the policies yet to be completed, discussed at the 15 February 2022 meeting***
 - c. With further analysis of risks and mitigation measures; and***
- 4. Approves the initial incorporation of the holding company with an equal and nominal number of shares held by Tasman District Council and Nelson City Council; and***
- 5. Approves the recruitment of the holding company independent chair in accordance with the Procedure for Joint Appointment of Directors/Trustees of Council Controlled Organisations and Council Controlled Trading Organisations; and***
- 6. Approves the appointment of the Board Chairs and the Chairs of the respective Audit (Finance) and Risk Committees (or designates), of Port Nelson Ltd and Nelson Airport Ltd to the holding company transitional board for a term of up to 18 months; and***
- 7. Notes that given their current board roles Catherine Taylor and Paul Steere will be the initial director appointments from Nelson Airport Ltd and Gerrard Wilson and Paul Zealand the initial director appointments from Port Nelson Ltd to the holding company transitional board; and***
- 8. Notes that should the initial appointees to the transitional holding company board cease their current roles on the Nelson Airport Ltd or Port Nelson Ltd board then the director carrying out those roles on the respective boards will replace them on the holding company board; and***

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- 9. Instructs staff to write to the Office of the Auditor General on behalf of the councils as shareholders, requesting they appoint Ernst & Young as the auditor for all holding company group entity audits; and***
- 10. Agrees that Report RJSC22-02-1, its attachments and the decision be made available to the Holding Company Working Group immediately following this meeting; and***
- 11. Agrees that Report RJSC22-02-1, Attachments 1,2,3 and the decision, redacted, if necessary, be made publicly available three days after it is made available to the Holding Company working group; and***
- 12. Agrees that Attachment 4 remain confidential at this time.***

CARRIED

PREVIEW

HOLDING COMPANY PROGRESS REPORT NO 1**AGENDA REPORT - 7.2 -HOLDING COMPANY PROGRESS REPORT NO 1 - CONFIDENTIAL**

Report To:	Joint Shareholders Committee
Meeting Date:	15 February 2022
Report Author:	Mike Drummond, Group Manager - Finance; Nikki Harrison, Group Manager Corporate Services
Report Number:	RJSC22-02-1

This report is confidential in accordance with the Local Government Official Information and Meetings Act 1987 (s7(2)(h)) (s7(2)(i)) - The withholding of the information is necessary to enable the local authority to carry out, without prejudice or disadvantage, commercial activities; AND The withholding of the information is necessary to enable the local authority to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).

1 Purpose of Report

- 1.1 This report is to update the committee on the progress to date, project timeline through to 1 July 2022 and key decisions and milestones to be met.

2 Report Summary

- 2.1 Tasman District Council and Nelson City Council resolved to form a holding company for their investment in Port Nelson Ltd and Nelson Airport Ltd. 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.
- 2.2 A working group consisting of the port, airport and council staff have been developing, in conjunction with external advisors, the establishment plan including undertaking the actions to give effect to the plan.
- 2.3 The key document for consideration of the committee is the “draft Holding Company Principles” (**Attachment 2**). This draft has been considered by the boards of Port Nelson Ltd and Nelson Airport Ltd. The document as drafted is intended to fall away by 1 July 2022. This is because the provisions in the document will be incorporated into policies, the Statement of Intent and other holding company documents.
- 2.4 In providing feedback on the functions in the draft Principles document we recommend that Councillors carefully consider what would be an appropriate level of autonomy at the subsidiary level. Also, careful consideration needs to be given to the appropriate level of oversight and monitoring of subsidiaries expected of the holding company board. The holding company board is ultimately responsible for the underlying borrowing from the Local Government Funding Agency (LGFA) and managing their council shareholders financing risk exposure.

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- 2.5 The other decision matters in this report are required as steps in the processes to establish the holding company and prepare it for operation from 1 July 2022.
- 2.5.1 Approving the standing up of the holding company;
 - 2.5.2 Appointing the holding company transition board;
 - 2.5.3 Engaging with the Office of the Auditor General over the appointment of the holding company and group auditor.
- 2.6 The latest project plan and proposed timelines is included as **Attachment 1** to this report. The timeline is tight because of the desire to have the new holding company operational from 1 July 2022.
- 2.7 Some decisions, in relation to the holding company and the transfer of the respective shareholding from each council, will be required to be made by each council independently. It is intended that this committee will, in those cases, make a recommendation to both councils.

3 Recommendation

That the Joint Shareholders Committee:

- 1. Receives the report Holding Company Progress report No 1; and**
- 2. Notes the project plan and timelines contained in Attachment 1**
- 3. Approves the draft Holding Company Principles as set out in Attachment 2 subject to the following amendments and feedback**
 - a. []
 - b. []
- 4. Approves the initial incorporation of the holding company with an equal and nominal number of shares held by Tasman District Council and Nelson City Council.**
- 5. Approves the recruitment of the holding company independent chair in accordance with the Procedure for Joint Appointment of Directors/Trustees of Council Controlled Organisations and Council Controlled Trading Organisations.**
- 6. Approves the appointment of the Board Chairs and the Chairs of the respective Audit (Finance) and Risk Committees (or designates), of Port Nelson Ltd and Nelson Airport Ltd to the holding company transitional board for a term of up to 18 months.**

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- 7. Notes that given their current board roles Catherine Taylor and Paul Steere will be the initial director appointments from Nelson Airport Ltd and Gerrard Wilson and Paul Zealand the initial director appointments from Port Nelson Ltd to the holding company transitional board.***
- 8. Notes that should the initial appointees to the transitional holding company board cease their current roles on the Nelson Airport Ltd or Port Nelson Ltd board then the director carrying out those roles on the respective boards will replace them on the holding company board.***
- 9. Instructs staff to write to the Office of the Auditor General on behalf of the councils as shareholders requesting, they appoint Ernst & Young as the auditor for all Holding Company Group entity audits.***

HOLDING COMPANY PROGRESS REPORT NO 1**4 Background and Discussion**

4.1 The Holding Company Working Group continues to work collaboratively on the set up of the holding company and related work streams. This report is to update the committee on the progress to date, timeline through to 1 July 2022 and key decisions and milestones to be met. The matters being presented to this committee for consideration have also been presented to the respective companies' boards. There are a range of views being expressed. Where there remains a difference of opinion between the respective parties these will be highlighted in this report or a verbal update from staff at the meeting.

4.2 Project Plan

4.2.1 Attached (**Attachment 1**) is the holding company project plan. This details, timelines and the current work streams and key dates.

4.2.2 The work streams are:

- Company Formation
- Governance and Shareholders
- Corporate Finance – Treasury
- Corporate Finance – LGFA
- Corporate Finance and Taxation
- Financial Accounting
- Shareholder communications

4.2.3 The key dates are related to Council and Joint Shareholders Committee meetings, company board meetings and working group meeting. The target is to have the holding company operational from 1 July 2022. This target date will require working at a reasonable pace with limited time for slippage in the timeline.

4.3 Holding Company Principles

4.3.1 Attached (Attachment 2) are the current draft holding company principles. These principles frame the holding company proposal and will form the basis for the legal and other agreements. The Joint Shareholders Committee approval for these principles (as amended in need) is required as they form the basis of ongoing work to establish the holding company.

4.3.2 These principles have been considered by the respective boards. The company boards have expressed concern regarding the loss of autonomy at the subsidiary company level. Nevertheless, there needs to be an acceptance that the legislative framework (and shareholder expectations) obligates the holding company to have oversight and monitor certain operational aspects.

4.3.3 The principles are primarily intended to define the purpose, function and responsibilities of the holding company. Further, they are designed to capture the balance between the legislative framework and autonomy at the subsidiary company level. Once adopted by the Council-Shareholders, the principles will be used to inform the construction of the shareholder agreement, policies and processes.

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- 4.3.4 Some key matters from the draft governance principles are set out below. The principles document is not an enduring agreement; it falls away over the coming months as the agreed principles are incorporated and reflected in the other agreements like the SOI, shareholders agreement, policy documents etc.
- 4.4 A decision is also required at this meeting on the composition of the transition board. This is necessary to stand up the company so there is a legal entity to enter into several agreements, including the LGFA borrowing arrangements.
- 4.5 Governance**
- Holding Company operational board composition**
- 4.5.1 The minimum number of directors is three (3), and the maximum number is six (6);
- 4.5.2 Board composition is a minimum of one (1) and maximum of two (2) directors from each of the subsidiaries and minimum of one (1) and maximum of two (2) independent directors.
- 4.6 Holding company director appointments and director remuneration**
- 4.6.1 Director appointments to the holding company are made in accordance with the Procedure for Joint Appointment of Directors/Trustees of Council Controlled Organisations and Council Controlled Trading Organisations (**Attachment 3**);
- 4.6.2 Director remuneration for Directors of the holding company determined in accordance with Procedure for Jointly setting remuneration for Directors of Council Controlled Trading Organisations.
- 4.7 Subsidiary director appointments and remuneration**
- 4.7.1 Director appointments to the holding company subsidiaries are made pursuant to a holding company Procedure for Appointment of Directors, which itself will align with the Council Shareholder's Procedure for Joint Appointment of Directors/Trustees of Council Controlled Organisations and Council Controlled Trading Organisations;
- 4.7.2 Remuneration for Directors of the holding company subsidiaries will be determined in accordance with a holding company Procedure for Appointment of Directors, which itself will align with the Council Shareholder's Procedure for Jointly setting remuneration for Directors of Council Controlled Trading Organisations;
- 4.7.3 The holding company will establish a Governance and Appointments Committee and will advise the outcome to the council shareholders for the appointments for which the holding company is responsible
- 4.7.4 The holding company will determine the membership and terms of reference of the Governance and Appointments Committee but will include a representative from each council shareholder;
- 4.7.5 The holding company is to have a Board charter aligned to best practice;

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- 4.7.6 The holding company will indemnify each Director and effect insurance in accordance with the Companies Act.

4.8 Functions of the Holding Company

Within the legislative framework for CCTO's, the holding company will act as an agile, low-cost, and light-touch entity

- 4.8.1 promoting autonomy at the holding company group's subsidiary level.

4.8.2 specific functions

- a. preparation of an annual Statement of Intent, including receiving from the subsidiaries their respective Statements of Intent;
- b. publication of six-monthly and annual reports;
- c. assist the group to increase shareholder value and regional prosperity through growth, investment and dividend payments;
- d. to monitor the performance of the group against the objectives and performance measures contained in the holding company SOI/SCI and other measures, for example, banking covenants, sector benchmarks;
- e. provide corporate finance and treasury advice;
- f. capital structure review(s);
- g. to obtain commercial borrowing facilities for the holding company and its subsidiaries, together with the group, at the most attractive rates and terms attainable;
- h. enter into shareholder loans between the holding company (as parent) and its subsidiaries.

- 4.8.3 In providing feedback on the functions in the draft principles document we recommend that Councillors carefully consider what they think would be an appropriate level of autonomy at the subsidiary level. Also, the level of oversight and monitoring expected of the holding company board. The holding company board is ultimately responsible for the underlying borrowing from the LGFA and managing the council shareholders financing risk exposure.

4.9 Transition Board

- 4.9.1 The function of the Holding company transition (initial) board will be to approve and sign legal documentation and approve other resolutions required to “stand-up” the holding company. It is proposed to stand up the holding company with a minimum board to allow this to occur. At the same time the process for recruiting the independent chair will need to commence. This should allow that appointment to be made in due course and prior to the holding company commencing operations on 1 July 2022.

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- 4.9.2 The recruitment of the independent chair will need to follow the Procedure for Joint Appointment of Directors/Trustees of Council Controlled Organisations and Council Controlled Trading Organisations. (Attachment 3).
- 4.9.3 As there is no incumbent board Chair the Mayors as co-chairs of this committee will meet with the appointed interim holding company board members which are proposed to include the port and airport board chairs to determine the skills matrix for the role.
- 4.9.4 The mayors as co-chairs of this committee will determine the composition of the appointment panel. They will also retain a recruitment consultant as required to advertise the vacancy and develop a list of candidates.
- 4.9.5 It is proposed that the transitional company directors be appointed for a term of up to 18 months. This term will allow some continuity as the operational board is appointed (say) later this year.
- 4.9.6 The initial holding company directors may, or may not, be the directors, post the 1 July operational target date or some later designated point in the holding company's establishment and operation. This is a decision for a future Joint Shareholders committee meeting (after engaging with the holding company board chair).
- 4.9.7 To stand up the holding company, it is proposed to appoint four initial directors. It is intended that the transition holding company board will comprise the Chairs of Port Nelson Ltd and Nelson Airport Ltd and the Chairs of the Audit/Finance and Risk Committees for each company during their current terms.
- Nelson Airport Limited: Catherine Taylor and Chair Paul Steere (or designate)
 - Port Nelson Limited: Gerrard Wilson and Chair Paul Zealand (or designate)
- The respective boards have considered and confirmed these directors are available and willing to serve on the holding company transitional board.
- 4.9.8 The working group do not see the need for an independent director during establishment given the transitional holding company board have access to the necessary expertise, for example, corporate finance, legal advice etc.
- 4.9.9 Additional remuneration for the increased workload will be payable to the transitional board appointees. This remuneration will be negotiated with the appointees and be consistent with their current remuneration levels. This remuneration cost will be treated as part of the establishment costs of the new entity.

4.10 Independent Technical Advice

The working group has agreed that:

- 4.10.1 PwC be appointed as treasury advisor for the holding company establishment. Post establishment the holding company will negotiate with and appoint an appropriate treasury advisor for the group.

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4.10.2 Simpson Grierson be appointed as legal advisor for the holding company establishment in particular the LGFA/lending work stream.

4.10.3 Westpac be appointed the holding company banker.

5 Options

5.1 It is recommended that The Office of the Auditor General (OAG) be requested to appoint Ernst & Young to all the holding company group entity audits once the group has been established. By appointing a single auditor to the group, we expect that we can leverage audit efficiencies and lower overall audit costs. The OAG recently appointed Ernst & Young as the Port Nelson Limited auditor.

6 Holding Company Name

6.1 Given the specific nature and purpose of the holding company, including the lack of public profile, it is recommended that the entity be granted a 'technical name' eg, Infrastructure Holdings Ltd. A recommendation on the company's final name will be brought back to a later Joint Shareholders Committee meeting.

7 Statements of Intent

7.1 It is intended in the future to provide the Statement of Expectations and Statement of Intent at the group level. For the 2022/23 year, the statements of (corporate) intent (SOI) will be completed at the company level. This approach will allow the Nelson Airport Ltd SOI and the Port Nelson Ltd SOI processes for 2022/23 to run as normal and meet the statutory time frames. The separate holding company initial SOI will be agreed with shareholders prior to it becoming fully operational. This is currently scheduled for 1 July 2022. An out of cycle Joint Shareholders Committee meeting may be required to consider the initial holding company Statement of Intent.

8 Transitional, setup and ongoing operational costs

8.1 Costs related to the transition and set up of the holding company continue to be met by Port Nelson Ltd in the first instance. It is agreed that once formed and capitalised, that the holding company will reimburse the Port company for these costs. As noted in the principles document, the holding company will be provided with services from Port Nelson Ltd on behalf of the group. Port Nelson Ltd will be compensated in due course by the holding company for those services.

9 Future Council and JSC Decisions

9.1 Several decisions and resolutions will need to occur to complete the setup and commence operation of the holding company. These are future decisions and matters for the Joint Shareholders Committee and the shareholding councils.

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- 9.1.1 Operational Board structure and member appointments and remuneration.
- 9.1.2 A review of the holding company Director appointment policy (subsidiaries)
- 9.1.3 Approval of the final holding company constitution.
- 9.1.4 Recommendations to shareholder councils on the capital structure including the level of uncalled capital, share valuation and capital release (if any).
- 9.1.5 Approval of the holding company name.
- 9.1.6 Recommendations to shareholder councils entering into the holding company shareholders agreement.
- 9.1.7 Recommending to the councils to approve the holding company accession to the LGFA's borrowing programme.

10 Options

- 10.1 This report requests several decisions that are interrelated and are the forerunner of future decisions to give effect to the formation of the holding company for Nelson Airport Ltd and Port Nelson Ltd.

Option 1: Agree to the work plan and related agreements as proposed with no or minor amendments	
Advantages	<ul style="list-style-type: none"> • This still provides for feedback on the underlying draft Holding Company Principles that will result in changes. • The timeline provides for the company to commence operations from 1 July 2022. • This builds on and supports the work of the cross-party working group. • This provides for the standing up of the company to allow work streams to progress on schedule.
Risks and Disadvantages	<ul style="list-style-type: none"> • The working party position may not align with shareholder council aspirations. If those aspirations are not articulated early, then making changes later could be costly or derail the project plan timelines. This would delay the financing benefits from the LGFA funding to the group.
Option 2: Reject the work plan and related agreements as proposed and instruct staff to engage on further rounds of negotiations.	

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<p>Advantages</p>	<ul style="list-style-type: none"> • If the proposed work plan and in particular the Holding Company Principles document is rejected then the councils can articulate further the key principles they want to see embodied in the holding company proposal.
<p>Risks and Disadvantages</p>	<ul style="list-style-type: none"> • Given the likely wide range of views there may not be sufficient council support for the key holding company principles. Major changes or full renegotiation to the principles would take time and may risk the project timeline.

11 Important considerations for decision making

11.1 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.

11.2 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.

11.3 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;

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- i. LGFA resourcing and response times. We understand that the LGFA is heavily involved in the Three Waters reform.
- ii. The immature nature of the LGFA process. LGFA lending to CCTOs is a new process. We understand our proposal is only the third such proposal for the LGFA under the new process. Likewise, although security groupings aren't new for Westpac, working with the LGFA on such a proposal is.
- iii. The extent of Council-Shareholder and board engagement with the process and their alignment on desired outcomes.

11.4 Financial impact

There are no direct budgetary or financial implications for the councils arising from these decisions. The costs to implement the holding company proposal are being met in the first instance by the Port company. They will in turn recover costs from the holding company. It is currently proposed that the holding company will be funded via the dividend streams from the subsidiary companies.

11.5 Degree of significance and level of engagement

This matter is of low to medium significance because it sets key principles and the timeline for the formation of the proposed 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. Councillors can rely on their knowledge of the views and preferences of the community when making these decisions.

11.6 Climate Impact

These decisions have no climate impact.

11.7 Inclusion of Māori in the decision making process

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

11.8 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*

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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 the both the Tasman District and the Nelson City Councils on this matter.*

12 Conclusion and Next Steps

- 12.1 The key document that frames and sets the stage for the formation and operation of the holding company is the draft Holding Company Principles. Councillors can agree or amend the proposed principles.
- 12.2 The other decisions required are to give effect to the standing up of the holding company and prepare it for operations from the target date of 1 July 2022.
- 12.3 The decisions of the committee on these matters will be communicated back to the Working Group.
- 12.4 A letter to the OAG will be sent on behalf of both councils requesting the preferred auditor appointment.

Author: **Nikki Harrison, Group Manager Corporate Services** Nelson City Council, **Mike Drummond** Group Manager Finance, Tasman District Council.

Attachments

1. Project Plan and Timelines
2. Holding Company Principles – *Note: the corporate structure diagram in clause c—Entity Structure diagram in the Key Principles represented a proposed structure and may be modified through ongoing negotiations*
3. The Procedure for Joint Appointment of Directors/Trustees of Council Controlled Organisations and Council Controlled Trading Organisations

HOLDING COMPANY PRINCIPLES

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January 2022

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Parties

Holding Company also referred to as "HoldCo";

Nelson Airport Limited also referred to as "Nelson Airport" or "NAL";

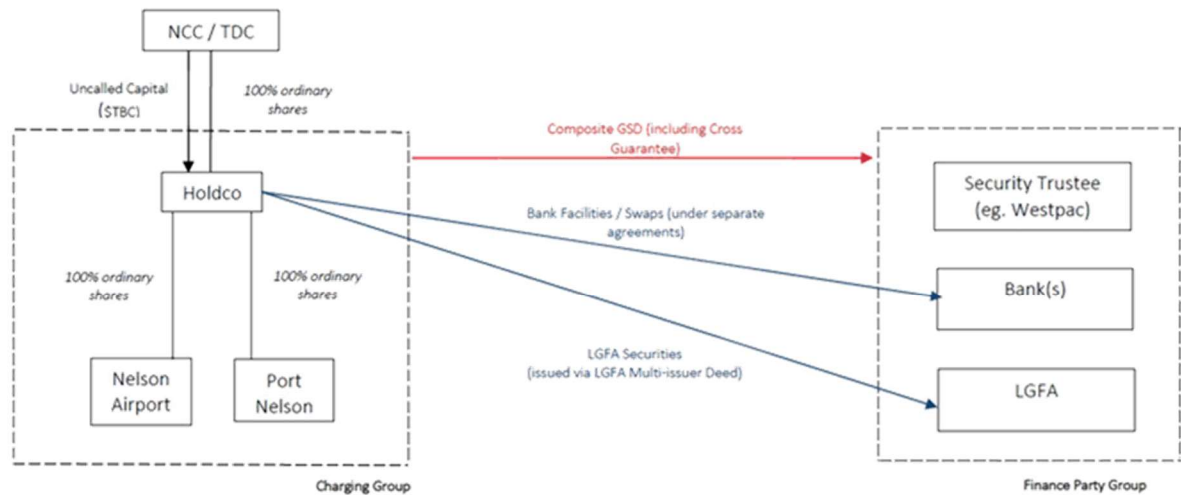
Port Nelson Limited also referred to as "Port Nelson" or "PNL";

NAL and PNL, together, are referred to as "subsidiaries."

Together, the "Group"

Entity Structure

- HoldCo is a Company owned equally by Nelson City Council and Tasman District Council (together referred to as the "Council-Shareholders").
- For the purposes of the Local Government Act 2002, HoldCo is a Council Controlled Trading Organisation.
- The following diagram represents the proposed entity structure and corporate structure.



Purpose

- a. HoldCo is an investor in companies in which the Council-Shareholders have a substantial interest, specifically:
 - i. Nelson Airport Ltd – 100% shareholding (Ministry of Transport ("MoT") holds one golden share)²
 - ii. Port Nelson Ltd – 100% shareholding
- b. HoldCo is to own the Council-Shareholders investment in the region's strategic assets for the benefit of the region as a whole.
- c. HoldCo is to provide the corporate treasury function for the Group, including securing and providing funding for the Group.

Scope and Objectives

- a. Section 59 Local Government Act 2002: The principal objective of a council-controlled organisation is to—
 - i. achieve the objectives of its shareholders, both commercial and non-commercial, as specified in the statement of intent; and
 - ii. be a good employer; and
 - iii. exhibit a sense of social and environmental responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage these when able to do so; and
 - iv. if the council-controlled organisation is a council-controlled trading organisation, conduct its affairs in accordance with sound business practice.
- b. Specific objectives—
 - i. to deliver strong, sustainable, and consistent financial returns and dividends to the Council-Shareholders;
 - ii. to monitor the performance of each subsidiary company against their stated economic, environmental, and social performance objectives against relevant benchmarks, and endeavour to put proper governance procedures in place;

¹ The MoT, on behalf of the Crown, holds a single redeemable preference share in NAL (defined as the Kiwishare in the constitution). The main right attached to the Kiwishare is to approve acquisition/disposal agreements or transactions involving the aerodrome reserve land.

- iii. to advise the Council-Shareholders on strategic issues relating to the Group's capital structures and corporate treasury functions;
- iv. in conjunction with the Council-Shareholders, make use of HoldCo for commercial opportunities that have the potential to enhance the economic, social, and environmental well-being of the region, to provide an adequate return, and to meet the strategic objectives of the Council-Shareholders;
- v. to ensure the best practice governance procedures are applied to the region's key regional infrastructure and financial investments that are under HoldCo's ownership;
- vi. making opportunities for subsidiary boards to network and discuss developments in governance practice.

Governance

- a. HoldCo board composition
 - i. The minimum number of directors is three (3), and the maximum number is six (6)
 - ii. Board composition to be a minimum of one (1) and maximum of two (2) directors from each of the subsidiaries and minimum of one (1) and maximum of two (2) independent directors
- b. HoldCo director appointments and director remuneration
 - i. Director appointments to HoldCo made in accordance with *Procedure for Joint Appointment of Directors/Trustees of Council Controlled Organisations and Council Controlled Trading Organisations*
 - ii. Director remuneration for Directors of HoldCo determined in accordance with *Procedure for Jointly setting remuneration for Directors of Council Controlled Trading Organisations*
- c. Subsidiary director appointments and remuneration
 - i. Director appointments to HoldCo subsidiaries made pursuant to a HoldCo *Procedure for Appointment of Directors*, which itself will align with the Council Shareholder's *Procedure for Joint Appointment of Directors/Trustees of Council Controlled Organisations and Council Controlled Trading Organisations*

- ii. Director remuneration for Directors of HoldCo subsidiaries determined in accordance with a HoldCo *Procedure for Appointment of Directors*, which itself will align with the Council Shareholder's *Procedure for Jointly setting remuneration for Directors of Council Controlled Trading Organisations*
- iii. HoldCo will establish a Governance and Appointments Committee and will advise the outcome to the Council-Shareholders for the appointments for which HoldCo is responsible.
- iv. HoldCo will determine the membership and terms of reference of the Governance and Appointments Committee but will include a representative from each Council Shareholder
- d. HoldCo to have a Board charter aligned to best practice
- e. HoldCo will indemnify each Director and effect insurance in accordance with the Companies Act.

Functions

Within the legislative framework for CCTO's, HoldCo will act as an agile, low-cost and light-touch entity promoting autonomy at the Group's subsidiary level.

Specific functions—

- a. preparation of an annual Statement of Intent, including receiving from the subsidiaries their respective Statements of Intent;
- b. publication of six-monthly and annual reports;
- c. assist the Group to increase shareholder value and regional prosperity through growth, investment and dividend payments;
- d. to monitor the performance of the Group against the objectives and performance measures contained in HoldCo SOI/SCI and other measures, for example, banking covenants, sector benchmarks;
- e. provide corporate finance and treasury advice;
- f. capital structure review(s);
- g. to obtain commercial borrowing facilities for HoldCo and its subsidiaries, together with the Group, at the most attractive rates and terms attainable;
- h. enter into Shareholder loans between HoldCo (as Parent) and its subsidiaries

Polices

Key HoldCo policies include;

- a. Procedure for Appointment of Directors Policy
- b. Dividend Policy
- c. Treasury Policy
- d. Delegated Authority Policy
- e. Conflicts of Interest Policy
- f. Risk management Policy and Procedures

Key Decisions

The HoldCo Board will not make the following keys decisions unless first approved by the Council Shareholders;

- a. make any material disposal of Group assets which are not budgeted for in the relevant Financial Year (or any series of related disposals which, if considered together, would be material for the Group);
- b. make any material change to the Group's Business;
- c. undertake any capital raising or external debt financing or refinancing not in accordance with the Group's corporate treasury structure policies, lending agreements, HoldCo Council-Shareholder covenants;
- d. enter into, terminate or grant a waiver of rights under, or material amendment to, any contract in relation to a transaction with a HoldCo Shareholder or a Related Party of a HoldCo Shareholder which has not been included in an approved budget or otherwise previously approved;
- e. grant any security interest over the assets of the Group, other than in the ordinary course of business or as permitted by policies, lending agreements;
- f. appoint an administrator or take a step to liquidate, dissolve or wind up HoldCo or any subsidiary;
- g. make any decision to undertake an initial public offering;
- h. make any alteration to, or revocation of, the Constitution or the adoption of a new Constitution for HoldCo;
- i. issue, cancel, buy-back or make any reduction of Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares;

- j. transfer any Shares held by the Group or purchase or otherwise acquire HoldCo Shares;
- k. give financial assistance for the purposes of, or in connection with, the purchase of Shares;
- l. consolidate, divide or subdivide any Shares or create, alter or cancel any rights attaching to Shares;
- m. apply any amounts available for distribution in paying up Shares or other securities;
- n. exercise the right to issue shares in lieu of dividends conferred by section 54 of the Companies Act;
- o. make any amendment to the Shareholder Agreement not expressly contemplated by the provisions of the agreement;
- p. create, acquire or sell any Subsidiary of the Group;
- q. any other matters expressly excluded in the Statement of Intent

Monitoring

HoldCo is accountable to the Council-Shareholders through several monitoring mechanisms.

The primary monitoring framework will be the Statement of Intent but will also include:

- a. Negotiation of an annual Statement of Intent
- b. Council appointment of directors to HoldCo
- c. Regular reporting to the Council, including quarterly updates
- d. Publication of six monthly and annual reports
- e. Regular reporting from the subsidiaries to HoldCo, including but not limited to Statement of Intent, forecasts and other reports appropriate with the HoldCo's purpose
- f. Shareholder loan agreements between HoldCo and its subsidiaries

Delegations

- a. The process for raising or paying down Group funds from the LGFA and banks shall be retained by HoldCo
- b. The process for the subsidiaries for raising or paying down funds shall be to maintain autonomy at the subsidiary level where the transaction meets specific agreed conditions, for example, but not limited to, the subsidiary's D/E ratios.

Service Delivery

- a. Port Nelson will provide services to HoldCo on behalf of the Group under a Service Level Agreement, including corporate treasury functions, Group reporting and company secretariat.
- b. HoldCo will compensate Port Nelson for the services provided.
- c. HoldCo will operate as a break-even business. Its core revenue will be interest and dividends received, while its core expenditure will be interest paid, treasury advice, finance and accounting.

Auditor

- a. HoldCo's auditor is the Auditor-General.
- b. HoldCo will seek to have Ernst Young appointed as HoldCo and the Group auditor.

Shareholder Agreement Drafting

The following matters still need to be considered in drafting the Shareholder Agreement.

- a.

Joint Appointment of Directors/Trustees of Council Controlled Organisations and Council Controlled Trading Organisations

Joint Policy of Nelson City Council/Tasman District Council

Contact Mike Drummond, Corporate Services Manager TDC
Nikki Harrison, Group Manager Corporate Services NCC

Approved by Joint Shareholders Committee

Date November 2020

Review November 2023

JOINT APPOINTMENT OF DIRECTORS/TRUSTEES

1. Introduction

1.1 Nelson City Council and Tasman District Council jointly control or have significant shareholdings in several Council Controlled Organisations (CCOs) and Council Controlled Trading Organisations (CCTOs). These are independent organisations, whose operations are governed by a board of directors or trustees.

2. Purpose

2.1 This Policy sets out the process for selection, appointment and review of directors/trustees jointly appointed to CCTOs, and to the governing boards of CCOs as per section 57 of the Local Government Act 2002.

3. Criteria for Selection of Directors/Trustees

3.1. The Joint Shareholders Committee must have regard to the diversity of each governing board when considering candidates for joint appointment or re-appointment.

3.2 Any person jointly appointed as a director/trustee of a CCO or CCTO must:

3.2.1 Have completed the Institute of Directors course; or

3.2.2 Have equivalent experience.

3.3 The following qualities of candidates for joint appointment as directors/trustees must also be considered:

3.3.1 Ability to think commercially and financially about strategies, projects and the intelligent deployment of resources;

3.3.2 Ability to communicate in a concise and clear manner;

3.3.3 Leadership skills, and willingness to be counted on important matters;

3.3.4 Commitment to, and understanding of, the responsibilities of directors / trustees;

3.3.5 Relevant business experience and/or the ability to gain an in-depth understanding of the company/trust and its activities;

3.3.6 Objectivity in decision making;

3.3.7 Respect for colleagues and staff;

3.3.8 High ethical standards;

3.3.9 Proven commercial experience;

3.3.10 Positive attitude to public ownership and the principles of good corporate citizenship;

3.3.11 Financial acumen;

3.3.12 Commitment to regional needs and priorities;

3.3.13 Any other special considerations/requirements in respect of the specific organisation.

4. Process for Appointment of Directors/Trustees

4.1. The Co-Chairs of the Joint Shareholders Committee will:

4.1.1. Meet with the Chairperson of the relevant governing board to discuss specific requirements (including whether the

- appointment is necessary), and to consider whether there is any need for a variation of procedure under section 8;
- 4.1.2. Retain a recruitment consultant as required to advertise the vacancy and develop a list of candidates; and
 - 4.1.3. Decide on the composition of the interview panel, which will include the board chairperson (or another board member if the board chairperson is unavailable)
- 4.2. The Joint Shareholders Committee may include on the list of candidates any persons recommended by the chairperson of the governing board.
 - 4.3. The recruitment consultant shall, in consultation with the interview panel, assist with any interview process and carry out reference checks of persons on the list of candidates, having regard to the criteria listed in Section 3 above, and report a short list with recommendations to the Joint Shareholders Committee.
 - 4.4. The interview panel will conduct interviews on the short list of candidates and recommend a preferred candidate (or in the case of multiple vacancies, candidates) to the Joint Shareholders Committee through the Group Manager Corporate Services and/or the Group Manager Community Services.
 - 4.5. The Joint Shareholders Committee will make the final decision to appoint the director/ trustee on the recommendation of the interview panel.

5. Process for Reappointment of Directors/Trustees

- 5.1. No Director/Trustee may be reappointed for a fourth consecutive term unless there are special circumstances.
- 5.2. Subject to the constitution of the organisation concerned, where a Director/Trustee's term of appointment is about to expire and they are offering themselves for reappointment, the Co-Chairs of the Joint Shareholder's Committee:
 - 5.2.1. May make confidential enquiries from the Chairperson and other members of the Governing Board as necessary, including:
 - Whether the skills of the incumbent add value to the work of the Governing Board;
 - Whether there are other skills which the Governing Board needs;

- Whether a change to the existing Directors/Trustees would compromise the Governing Board's ability to pursue a desired vision and long term strategy, or whether there is a need for new skills and ideas on the Board; and
 - Whether an appointment is necessary.
- 5.2.2. Must consider any information obtained and form a view on the appropriateness of reappointment or making a replacement appointment; and
- 5.2.3. Must recommend to the Joint Shareholders Committee whether reappointment is appropriate.
- 5.3. If reappointment is not appropriate, the appointment process outlined in Section 4 will be followed.

6. **Performance of directors/trustees**

- 6.1. A review of the Board and individual director/trustee performance shall be undertaken by the Chairperson of the governing board at least once every 18 months, including consideration of:
- 6.1.1. Board 'fit' and rapport;
 - 6.1.2. Demonstration of the necessary skills and qualities;
 - 6.1.3. Any changes in the organisation's strategic direction which may require different skills or experience;
 - 6.1.4. Individual's contribution and meeting attendance.
- 6.2. The Chair of the Board should reference this evaluation when making recommendations on the re-appointment or recruitment of Board members.

7. **Remuneration of directors/trustees**

- 7.1. Remuneration of directors/trustees of jointly held CCTOs is covered by the *Procedure for Joint setting remuneration for Directors of Council Controlled Trading Organisations (A1929440)*.
- 7.2. Remuneration of directors/trustees of jointly held CCOs is set in accordance with scales approved from time to time by the Joint Shareholders Committee prior to the organisation's annual general meeting.

8. Appointment of staff members or Elected Members as directors/trustees

- 8.1. No staff member or elected member of either Council may be jointly appointed as a director/trustee, except where good reason exists for doing so. Any report recommending the appointment or reappointment of a staff member or elected member of either Council must clearly explain the reasons for doing so.
- 8.2. Subject to clause 8.1, each Council may develop separate policies regarding the appointment of elected members or staff members as directors/trustees.

9. Variation of Procedure

- 9.1. The procedures outlined in this policy may be varied to meet the requirements of the organisation's rules, constitution, trust deed or other guiding document, provided that such variation meets the requirements of the Local Government Act 2002.
- 9.2. The Joint Shareholders Committee may decide to vary the procedures outlined in Sections 4 and 5 of this policy as necessary, provided that such variation is not contrary to the requirements of the Local Government Act 2002, and conforms to relevant trust deed, the company's constitution, and other relevant legislation e.g. the Port Companies Act.