

Decision released from confidential session			
Recommendation from (agenda report)	Date of meeting	Recommendation to (decision-making meeting)	Date of meeting
Joint Committee	29Nov2022		
Report Title and number - R27256			
Joint Council Controlled Organisations - Matters for Statements of Expectations (Tasman Bays Heritage Trust and Infrastructure Holdings Limited) 2023-24			
Documents released			
Report (R27256) and decision (JC/2022/015)			
That the Joint Committee of Tasman District and Nelson City Councils			
<ol style="list-style-type: none"> 1. <u>Receives</u> the report Joint Council Controlled Organisations - Matters for Statements of Expectations (Tasman Bays Heritage Trust and Infrastructure Holdings Limited) 2023-24 (R27256); and 2. <u>Confirms</u> the expectations for Statements of Intent/Statements of Corporate Intent set out in paragraphs 4.6-4.26; Additional expectation to be added: Work towards Climate Related Disclosure reporting, by 2024; and 3. <u>Instructs</u> officers to make the completed Statements of Expectation available on the Tasman District Council and Nelson City Council websites within 30 days after they are received by the respective Council Controlled Organisation/Council Controlled Trading Organisation; and 4. <u>Agrees</u> that Report and the decision be made publicly available once the completed Statements of Expectation are made available on the Tasman District Council and Nelson City Council websites. 			

Joint Committee of Tasman District and Nelson City Councils

29 November 2022

Report Title: Joint Council Controlled Organisations - Matters for Statements of Expectations (Tasman Bays Heritage Trust and Infrastructure Holdings Limited) 2023-24

Report Author: Nikki Harrison - Group Manager Corporate Services

Report Number: R27256

1. Purpose of Report

1.1 To provide direction to officers on the Councils' expectations for jointly owned Council Controlled Organisations (CCOs) and Council Controlled Trading Organisations (CCTOs). This is to allow officers to prepare Statements of Expectation for delivery to these entities.

2. Summary

2.1 Although not legally required, it is best practice for shareholders to signal to CCOs and CCTOs their expectations for each organisation in the 2023/24 financial year. A letter will be prepared to each board/trust outlining both general and specific expectations of matters to be addressed in the next Statement of Intent.

2.2 This report identifies both the general and specific requirements proposed for inclusion in the Statement of Expectation (SOE).

2.3 Statements of Expectation are required to be made public on the shareholding councils' websites and it is intended that this occurs approximately 30 days after their issue to allow the CCOs time to consider the expectations (and engage with shareholders) prior to the public notification.

3. Recommendation

That the Joint Committee of Tasman District and Nelson City Councils

1. ***Receives the report Joint Council Controlled Organisations - Matters for Statements of Expectations (Tasman Bays Heritage Trust and Infrastructure Holdings Limited) 2023-24 (R27256); and***
2. ***Confirms the general expectations for Statements of Intent/Statements of Corporate Intent set out in paragraphs 4.6-4.24; and***
3. ***Instructs officers to make the completed Statements of Expectation available on the Tasman District Council and Nelson City Council websites within 30 days after they are received by the respective CCO/CCTO; and***
4. ***Agrees that Report and the decision be made publicly available once the completed Statements of Expectation are made available on the Tasman District Council and Nelson City Council websites.***

4. Exclusion of the Public

4.1 This report has been placed in the confidential part of the agenda in accordance with section 48(1)(a) and section 7 of the Local Government Official Information and Meetings Act 1987. The reason for withholding information in this report under this Act is to:

- Section 7(2)(i) To enable the local authority to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)

5. Background and Discussion

5.1 The preparation of Statements of Expectation is not required but is provided for under the Local Government Act 2022 (LGA 2002). However, it is best practice for the councils to signal to CCOs and CCTOs their expectations for each organisation in the 2023/24 financial year. These expectations can then be considered by these entities to guide their strategic direction and to assist in the development of the Statement of Intent (SOI) for that financial year.

5.2 This also means that the councils engage with these entities early and therefore any difference in expectations can be addressed early in the process.

5.3 Council officers maintain good relationships with their colleagues at each of these organisations and are always ready to assist them in the

interpretation of LGA requirements and the preparations of their respective SOIs.

- 5.4 With the decision by the councils to form Infrastructure Holding Ltd. (IHL) There will now be a single Statement of Expectation (SoE) for the IHL group, rather than individual SoEs for Port Nelson Ltd and Nelson Airport Ltd.
- 5.5 Prior to the forming of IHL the port prepared a SOCI under the Port Companies Act. The provisions in that act provided a different (later) timetable to those in the LGA 2002. With the decision to form IHL there is now a group SOI. That group SOI is delivered under the LGA so there is only one timeline being followed.

General expectations to be included in SOIs

- 5.6 SOIs must include a complete set of summary prospective financial statements for at least three years (preferably five years) i.e., Statement of Comprehensive Income, Statement of Financial Position and Cash Flow statement.
- 5.7 SOIs should disclose measures like Earnings before Interest and Tax (EBIT) and Earnings before Interest, Tax, Depreciation and Amortisation (EBITDA) and balance sheet ratios where applicable i.e., CCTOs.
- 5.8 SOIs must fully comply with Schedule 8 of the LGA 2002.
- 5.9 In the Public Records Act 2005, a local authority includes a (Council Controlled) (Council-Controlled Trading) Organisation. As such, the requirements of this Act and its related mandatory Information and Records Management Standard - July 2016 applies for the management, retention, and disposal of records.
- 5.10 Compliance with legislation and reporting on Health and Safety matters must be given due emphasis.
- 5.11 Proposed dividends are to be disclosed along with the dividend pay-out policies, where applicable.
- 5.12 Where the councils make a financial contribution to the operational costs of the organisation, the CCO should show how it intends to increase non-council revenue streams.
- 5.13 Capital expenditure and asset management intentions should be included.
- 5.14 CCOs should use the same information for both managing the business and reporting through to the councils/shareholders, i.e., the information used for setting targets and reporting against them for the SOI should overlap and be a subset of the information used for internal reporting.

5.15 SOIs and other CCO reports should be in a plain style, concise, relevant, accessible and focused on meeting the needs of the shareholding councils and the public they represent. The use of graphs, tables and charts is expected to convey both financial and non-financial information along with trends (past, current and future numbers).

5.16 To be effective the SOI must disclose the performance story for the CCO, providing a clear and succinct understanding of the CCO purpose, the goods and services it delivers and what success looks like. Providing a clear message to the boards on these requirements and other expectations will assist in ongoing improvements in the SOI and reporting.

5.17 The main aspects of the SOI performance story are:

- Strategic context
- Specifying and presentation of the outcome's framework
- Main measures and targets, outcomes and objectives
- Linking the strategy outputs performance together.

5.18 **Risk management** – Shareholders/the councils would like to see documented in the SOI how the boards are managing risks, including natural hazards and climate change.

5.19 **Sustainability** - Shareholders would like to understand what measures and targets are in place to address environmental and climate change concerns, including measures to:

- Support the transition to net zero carbon emissions by 2050;
- Prepare for the impacts of climate change, including assessing key organisational climate change risks, and
- Minimise waste and support the shift to a circular economy.

5.20 **Health and safety** - Given the requirements of the Health and Safety at Work Act 2015 (the Act), it is appropriate for the councils to set out their expectations in relation to Health and Safety in the CCOs/CCTOs.

5.20.1 Under Section 44 (3) of the Act elected members do not have a duty to exercise due diligence to ensure that any Council Controlled Organisation complies with its duties or obligations under the Act unless that member is also an officer of that Council Controlled Organisation.

5.20.2 However, as shareholders being a key funder, it is still appropriate to set out expectations of Health and Safety management in CCOs/CCTOs.

- 5.20.3 The councils/shareholders expect the boards of the jointly held CCOs/CCTOs to set appropriate Health and Safety strategies and policy, understand the nature of risks/hazards within the business, monitor performance and activities to ensure risk is being managed and review Health and Safety systems and performance.
- 5.21 **Relationships** - Specify how the organisation intends to conduct its relationships with;
- 5.21.1 its shareholding local authorities; and
- 5.21.2 Its subsidiary companies (if applicable); and
- 5.21.3 the Tasman and Nelson communities, including parties considered as stakeholders within those communities; and
- 5.21.4 Iwi, hapū, and other Māori organisations.
- 5.22 Shareholders/the councils require that CCOs/CCTOs, before making a decision that may significantly affect land or a body of water, must consider the relationship of Māori and their culture and traditions with their ancestral land, water, sites, wāhi tapu, valued flora and fauna, and other taonga.
- 5.23 **Governance performance** - in order to aid the councils when making decisions on director/trustee remuneration and appointments, the boards should undertake a regular evaluation of their performance.
- 5.23.1 The councils expect these reviews to be carried out at least once every eighteen months.
- 5.23.2 The chairs of the boards should reference this evaluation when making recommendations on the re-appointment or recruitment of board members.

General expectation added

- 5.24 The Boards/Trust should ensure that there is 'no surprises' communication with the shareholder councils on matters which are in the public interest and are not highly commercially sensitive.

General expectations removed

- 5.25 General expectations related to the effects or mitigation of COVID-19 have been removed as the pandemic effects are expected to lessen over the coming year, most government mandates have been removed, and COVID-19 management will become business as usual. Any ongoing impacts on dividend streams should be addressed in the relevant sections of the SOI.

Specific expectations to be included in SOIs

- 5.26 It is proposed that the following specific expectations be set out in the SOE letters:

Infrastructure Holdings Limited

- 5.26.1 Inclusion of key financial covenants, aligned with the lender's covenants, which allow the shareholder councils to proactively monitor the performance of the group and exposure of the shareholders to the uncalled capital.
- 5.26.2 Inclusion of projected capital programs and debt for the Group for up to 10 years;
- 5.26.3 Inclusion of the Pitt and Moore table laying out responsibilities and structuring of the three boards as part of the Statement of Intent.

IHL specific expectations in regards to Port Nelson Limited and Nelson Airport Limited

- 5.26.4 Elected members have the opportunity to signal to the Infrastructure Holdings Limited Board specific expectations in relation to the Port and Airport.
- 5.26.5 In addition to the general expectations in relation to climate change, shareholders expect that Climate Resilience Plans are developed and implemented for the Port and Airport.

6. Options

- 6.1 The options are:

Option 1: Accept the matters to be included in the Statement of Expectation letters	
Advantages	<ul style="list-style-type: none">Provides clear and early direction to CCOs/CCTOs to assist with the preparation of the 2023/24 SOIs
Risks and Disadvantages	<ul style="list-style-type: none">None
Option 2: Amend the matters to be included in the Statement of Expectation letters	
Advantages	<ul style="list-style-type: none">Provides clear and early direction to CCOs/CCTOs to assist with the preparation of the 2023/24 SOIs

Risks and Disadvantages	<ul style="list-style-type: none"> • None
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7. Important considerations for decision making
<p>7.1 Fit with Purpose of Local Government</p> <p>Infrastructure Holdings Ltd through its ownership of the Port and Airport provides important local infrastructure to Nelson City and Tasman District residents and businesses which support the economic wellbeing of the community. The process of guiding SOI content helps ensure this infrastructure is provided in a cost-effective way and delivers the required outcomes.</p> <p>TBHT provides local cultural and heritage services to Nelson City and Tasman District residents and visitors which support social and cultural wellbeing.</p>
<p>7.2 Consistency with Community Outcomes and Council Policy</p> <p>The preparation of Statements of Expectation has not previously been codified under the LGA. Under the LGA they are now an option that may be used. However, it is best practice for shareholders/councils to signal to CCOs/CCTOs their expectations for the organisation. For that reason, the Joint Committee has been considering SOE and authorising them for some years.</p> <p>With the passing of the Local Government Act 2002 Amendment Act 2019, a number of changes affecting CCOs/CCTOs were made. These included a formal definition of a Statement of Expectation. These remain optional and are about relationships, engagement and collaboration.</p>
<p>7.3 Risk</p> <p>Providing a Statement of Expectation mitigates the low risk that the CCO/CCTO develops an SOI which is not aligned with the councils'/shareholders' expectations.</p>
<p>7.4 Financial impact</p> <p>None.</p>
<p>7.5 Degree of significance and level of engagement</p> <p>This matter is of low significance because this decision is about setting expectations early in the SOI process and there are other decision</p>

<p>points along the way. Engagement will occur with the CCOs and CCTOs but is not required with the wider community.</p> <p>This matter is of low significance because this decision is about setting expectations early in the SOI process and there are other decision points along the way. Engagement will occur with the CCOs and CCTOs but is not required with the wider community.</p>
<p>7.6 Climate Impact</p> <p>Climate change responsiveness has been identified by the councils/shareholders as a specific matter of interest in the Statement of Expectation letters.</p>
<p>7.7 Inclusion of Māori in the decision making process</p> <p>No engagement with Māori has been undertaken in preparing this report.</p>
<p>7.8 Delegations</p> <p>The Joint Committee has the following delegations to consider the content of the Statement of Expectation:</p> <p><i>Areas of Responsibility:</i></p> <ul style="list-style-type: none"> • <i>Matters relating to Statements of Expectation for all jointly owned Council Controlled Organisations and Council Controlled Trading Organisations; and</i> <p><i>Powers to Decide:</i></p> <ul style="list-style-type: none"> • <i>To determine the strategic direction to be given to jointly owned CCOs and CCTOs through Statements of Expectation.</i>

8. Conclusion and Next Steps

- 8.1 An SOE is an opportunity for the shareholding councils to clearly indicate to the jointly owned CCOs/CCTOs the shareholders' expectations. This approach will help ensure that the draft SOI, when received by the councils, will meet their expectations.
- 8.2 Officers will prepare and issue an SOE to each CCO/CCTO. The SOE is signed off by the respective Mayors on behalf of the shareholders.
- 8.3 The SOE will be placed on the respective councils' websites 30 days after they are received by the CCO/CCTO.
- 8.4 The CCO will consider the SOE in developing its draft SOI for consideration by shareholders.

Attachments
Nil

Released 12 April 2023