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**MINUTES**  
of the  
**JOINT SHAREHOLDERS COMMITTEE MEETING**  
**Komiti Joint Shareholders**  
held  
**9.00 am, Monday, 22 May 2023**  
at  
**Tasman Council Chamber, 189 Queen Street, Richmond**  
**and via Zoom**

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**Present:** **Tasman District Council:** Mayor T King, Councillors B Dowler (via Zoom), C Hill (via Zoom), K Maling and C Mackenzie (via Zoom)

**Nelson City Council:** Mayor N Smith (Chair), Deputy Mayor R O'Neill-Stevens (via Zoom), Councillors M Benge, M Courtney, K Paki Paki and R Sanson

**In Attendance:** **Tasman District Council:** Chief Executive Officer (J Dowding), Group Manager – Finance (M Drummond), Executive Assistant and Advisor to the Mayor (R Scherer), Senior Legal Advisor (M Callander) and Democracy Services Officer (R Harvey)

**Nelson City Council:** Group Manager Corporate Services (N Harrison)

**Part Attendance:** Tasman District Council: Group Manager – Service and Strategy (J Ridd)

**1 OPENING, WELCOME**

Mayor Smith welcomed everyone and offered the opening karakia.

**2 APOLOGIES AND LEAVE OF ABSENCE**

Leave of absence for this meeting was previously granted to Deputy Mayor S Bryant.

**Moved Mayor Smith/Mayor King**

**JSC23-05-1**

**That apologies from Deputy Mayor S Bryant be accepted.**

**CARRIED**

**3 DECLARATIONS OF INTEREST**

Nil

**4 CONFIRMATION OF MINUTES**

**Moved Councillor Sanson/Councillor Paki Paki**

**JSC23-05-2**

**That the minutes of the Joint Shareholders Committee meeting held on Thursday, 27 April 2023, be confirmed as a true and correct record of the meeting.**

**CARRIED**

**Moved Councillor Courtney/Mayor King**

**JSC23-05-3**

**That the confidential minutes of the Joint Shareholders Committee meeting held on Thursday, 27 April 2023, be confirmed as a true and correct record of the meeting.**

**CARRIED**

**5 LATE ITEM**

**Moved Councillor Maling/Councillor Courtney**

**JSC23-05-4**

**That the late item, 8.2, Infrastructure Holdings Limited - Transfer of Shares in Port Nelson Limited and Nelson Airport Limited - Late Attachments, be considered at today's meeting. In accordance with section 46A(7) of the Local Government Official Information and Meetings Act 1987 and Standing Order 9.12, the reason the item was not on the agenda is that the three attachments were not available when the agenda was published and the reason that the item cannot be delayed until a subsequent meeting is because, the three attachments are schedules to Attachment 3 in support of the report, RJSC23-04-5 Infrastructure Holdings Limited – Transfer of Shares in Port Nelson Limited and Nelson Airport Limited.**

**CARRIED**

## 6 REPORTS

### 6.1 Infrastructure Holdings Limited - transfer of shares in Port Nelson Limited and Nelson Airport Limited

Tasman District Council Group Manager – Finance, Mike Drummond, Senior Legal Advisor, Marie Callander, and Nelson City Council Group Manager – Corporate Services, Nikki McDonald presented the report which was taken as read.

The Committee discussed the following:

- The transfer value of the shares;
- The effect of any tax obligations in relation to capital gains;
- The advice provided by Deloitte New Zealand regarding the implications of tax on the shares transfer; Mr Drummond agreed that he would ask Deloitte New Zealand if they had made an error with their original advice to the councils or if staff had mis- interpreted their advice;
- Shareholder representation on the Board of Infrastructure Holdings Limited;
- Directors remuneration.

*Nelson City Council Deputy Mayor Rohan O'Neill-Stevens joined the meeting at 9.23 am.*

After a lengthy discussion regarding the process to appoint Directors to the Infrastructure Holdings Limited Board, the meeting was adjourned to allow Officers time to amend the recommendation contained in the report.

*The meeting adjourned at 9.59 and resumed at 10.53 am.*

Officers proposed the following amendment to the recommendation:

*The Joint Shareholders Committee agrees to amend clauses 5.3, 13.2 and 13.5 of the updated Shareholders Agreement in the form attached (Attachment 1) to read as follows:*

*5.3 - Any appointment of a Subsidiary and any remuneration of any such director, is to be made by the Board who must ensure that such remuneration is not inconsistent with any current Shareholders' joint directors remuneration policy.*

*13.2 - The Governance and Appointments Committee will have three members.*

*13.5 - The Board shall be entitled to appoint, remove and replace one member to the Governance and Appointments Committee at any time but any member must not be a director of the Subsidiary for whom the appointment is being made.*

*Notes that prior to each Council's decision on the recommendations (that were not included in the Report RJSC23-04-5) made at today's meeting of the Joint Shareholders Committee, staff will:*

- a. *engage with the wider working group including the group's professional advisors;*  
*and*
- b. *identify any inconsistencies that these changes may create with existing documents and include those matters in their reports (if any) to the individual Councils.*

**Moved Councillor Maling/Councillor Benge**

**JSC23-05-5**

**That the Joint Shareholders Committee:**

- 1. receives the Infrastructure Holdings Limited - transfer of shares in Port Nelson Limited and Nelson Airport Limited report; and**
- 2. notes that:**
  - a. when the Joint Shareholders Committee previously approved and recommended to each of Nelson City Council (NCC) and Tasman District Council (TDC) (in RJSC22-6-1) the form of a Shareholders' Agreement for Infrastructure Holdings Limited (IHL) and an Agreement for Sale and Purchase of Shares in Port Nelson Limited (PNL) and Nelson Airport Limited (NAL), the values for the shares in each of PNL and NAL were recorded at book value (being, at that time, \$8,446,000 in total); and**
  - b. upon the incorporation of IHL on 17 January 2023, NCC and TDC each subscribed for (and IHL issued) 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 was therefore \$8,446,000 (Initial Subscription Amount). This was equal to the aggregate book value of PNL and NAL, as determined at the time that RJSC22-6-1 was approved. The consideration for the Initial Shares (being the Initial Subscription Amount) remains unpaid and will be paid to IHL in accordance with the Shareholders' Agreement (that is to be approved in these resolutions); and**
  - c. Deloitte has now advised that the share values in each of PNL and NAL needs to be recorded at market value (being the value of net assets as at 31 March 2023) for the purposes of the transfer of those shares from NCC and TDC to IHL on 1 July 2023. Deloitte has valued the net assets of:**
    - i. NAL at \$103,700,000; and**
    - ii. PNL at \$275,700,000,****resulting in a total net asset value of \$379,400,000 for PNL and NAL combined (New Valuation); and**
  - d. in order for IHL to be capitalised in an amount equal to the purchase price for the shares in PNL and NAL (being \$379,400,000), it will be necessary for NCC and TDC to each subscribe for a further 1,854,770 ordinary shares in IHL (being a further 3,709,540 ordinary shares in total) (Second Shares) at an issue price of \$100.00 per share (Second Share Issue). The total consideration for the Second Share Issue will be \$370,954,000 and will also be paid in accordance with the Shareholders' Agreement; and**
  - e. the Shareholders' Agreement for IHL in the form attached (Attachment 1) (Shareholders' Agreement) and the Agreement for Sale and Purchase of Shares in PNL and NAL in the form attached (Attachment 2) (Agreement for Sale and Purchase of Shares) have been updated from the form provided at RJSC22-6-1 to reflect the New Valuation and the Second Share Issue; and**
  - f. Entitled persons' approvals will be required under the Companies Act 1993 (Act) prior to IHL's entry into the Shareholders' Agreement and Agreement for Sale and Purchase of Shares, on the basis that (among other reasons already notified to this committee) the Second Share Issue will be undertaken in accordance with:**

- i.* section 107(2) of the Act, so that the Second Shares may be issued otherwise than in accordance with sections 42, 44 or 45 of the Act; and
      - ii.* clause 3.4 of IHL’s constitution; and
    - g.** The resolution at JSC22-06-5 noted at items G., H., I., and S. that:
      - 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.*
      - 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.*
- 3.** amends G., H., I., and S. of resolution JSC22-06-5, to reflect the New Valuation, the Second Share Issue, and the updated form of Unanimous Shareholder Resolutions and Entitled Persons’ Agreement, as follows:
- 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 \$379,400,000 in total (Purchase Price). The Purchase Price will be owed to the Shareholders in equal portions (being \$189,700,000 each). The Crown holds, and will continue to hold, one special “Kiwi Share” in NAL.**
  - H.** **The Purchase Price allocation is:**
    - a) \$103,700,000 for the shares in NAL; and**
    - b) \$275,700,000 for the shares in PNL.**
  - I.** **Upon incorporation of IHL, Nelson City Council and Tasman District Council each subscribed for (and IHL issued) 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 will be paid for in accordance with IHL's Shareholders' Agreement. Since IHL's incorporation on 17 January 2023, Deloitte has valued the shares in PNL and NAL at a total combined value of \$379,400,000. Accordingly, in order to capitalise IHL in an amount equal to the Purchase Price, Nelson City Council and Tasman District Council will each subscribe for a further 1,854,770 ordinary shares in IHL (being a further 3,709,540 ordinary shares in total) (Second Shares) at an issue price of \$100.00 per share (Second Share Issue). The consideration for the Second Share Issue will also be paid in accordance with the Shareholders' Agreement.

- 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 requires the agreement of Nelson City Council and Tasman District Council as IHL's shareholders and only entitled persons (as that term is defined in the Act) for all purposes (including to meet any requirement under the Act).
  - c) the Second 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 and for the purposes of clause 3.4 of IHL's constitution.
  - d) 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, the Second Shares and the New Shares;
4. Agrees to amend clauses 5.3, 13.2 and 13.5 of the updated Shareholders Agreement in the form attached (Attachment 1) to read as follows:
- Clause 5.3**
- Any appointment of a Subsidiary and any remuneration of any such director, is to be made by the Board who must ensure that such remuneration is not inconsistent with any current Shareholders' joint directors remuneration policy.
- Clause 13.2**
- The Governance and Appointments Committee will have three members.
- Clause 13.5**
- The Board shall be entitled to appoint, remove and replace one member to the Governance and Appointments Committee at any time but that member must not be a director of the Subsidiary for whom the appointment is being made.
5. Notes that prior to each Council's decision on the recommendations (that were not included in the Report RJSC23-04-5) made at today's meeting of the Joint Shareholders Committee, staff will:

- a. engage with the wider working group including the group's professional advisors; and
  - b. identify any inconsistencies that these changes may create with existing documents and include those matters in their reports (if any) to the individual Councils.
6. agrees to:
- a. enter into the updated Shareholders Agreement in the form attached (Attachment 1) as amended by resolution 4 above (which will record the terms of the Initial Share Issue and the Second Share Issue) before the date that Nelson City Council and Tasman District Council each transfer their respective shareholdings in NAL and PNL to IHL;
  - b. enter into the updated Agreement for Sale and Purchase of Shares in the form attached (Attachment 2); and
  - c. approve the updated form of Unanimous Shareholder Resolutions and Entitled Persons' Agreement (Attachment 3), and authorise the Chief Executive of each of TDC and NCC to sign it and make any amendments to it prior to signing.

#### Recommendation to Nelson City Council and Tasman District Council

The Council notes that:

#### *Purpose*

- A. to seek Council's approval for:
- a) the necessary amendments to update the form (previously approved by each of Nelson City Council (NCC) and Tasman District Council (TDC)) of each of:
    - i. the Infrastructure Holdings Limited (IHL) Shareholders' Agreement to be in the form attached (Attachment 1) (Shareholders' Agreement);
    - ii. the Agreement for Sale and Purchase of Shares in Port Nelson Limited (PNL) and Nelson Airport Limited (NAL) in the form attached (Attachment 2) (Agreement for Sale and Purchase of Shares) under which the shares of PNL and NAL are to be transferred from NCC and TDC to IHL; and
    - iii. Unanimous Shareholder Resolutions and Entitled Persons' Agreement in relation to the "Restructuring Transactions" (as defined in the Council's previous resolutions [*insert reference*]) (Attachment 3); and
  - b) an updated resolution for the purposes of section 50 of the Companies Act 1993 (Act).

#### *Share values*

- B. when the Joint Shareholders Committee previously approved and recommended to each of NCC and TDC (in RJSC22-6-1) the form of a Shareholders' Agreement for IHL and an Agreement for Sale and Purchase of Shares in PNL and NAL, the values for the shares in each of PNL and NAL were recorded at book value (being, at that time, \$8,446,000 in total); and
- C. upon the incorporation of IHL on 17 January 2023, NCC and TDC each subscribed 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 was therefore \$8,446,000 (Initial Subscription Amount). This was equal to the aggregate book value of PNL and NAL, as determined at the time that RJSC22-6-1 was approved. The consideration for the Initial Shares (being the Initial Subscription Amount) remains unpaid and will be paid to IHL in accordance with the Shareholders' Agreement (that is to be approved in these resolutions); and

D. Deloitte has now advised that the share values for each of PNL and NAL need to be recorded at market value (being the value of net assets as at 31 March 2023) for the purposes of the transfer of those shares from NCC and TDC to IHL on 1 July 2023. Deloitte has valued the net assets of:

- i. NAL at \$103,700,000; and
- ii. PNL at \$275,700,000,

resulting in a total net asset value of \$379,400,000 for PNL and NAL combined (New Valuation); and

E. in order for IHL to be capitalised in an amount equal to the purchase price for the shares in PNL and NAL (being \$379,400,000), it will be necessary for NCC and TDC to each subscribe for a further 1,854,770 ordinary shares in IHL (being a further 3,709,540 ordinary shares in total) (Second Shares) at an issue price of \$100.00 per share (Second Share Issue). The total consideration for the Second Share Issue will be \$370,954,000 and will also be paid in accordance with the Shareholders' Agreement; and

F. the Shareholders' Agreement and the Agreement for Sale and Purchase of Shares have been updated from the form provided at [*insert date of individual NCC/ TDC resolution*], to reflect the New Valuation and the Second Share Issue; and

G. Entitled persons' approvals will be required under the Act prior to IHL's entry into the Shareholders' Agreement and Agreement for Sale and Purchase of Shares, on the basis that (among other reasons already notified to this Council) the Second Share Issue will be undertaken in accordance with:

- i. section 107(2) of the Act so that the Second Shares may be issued otherwise than in accordance with sections 42, 44 or 45 of the Act; and
- ii. clause 3.4 of IHL's constitution; and

H. The resolution at [*insert date of individual NCC/ TDC resolution*], noted at items G., H., I., and S. that:

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.*

- 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.**

The Council resolves that:

- 1 The Council amends G., H., I., and S. of resolution [insert date of individual NCC/ TDC resolution], to reflect the New Valuation, the Second Share Issue and the updated form of Unanimous Shareholder Resolutions and Entitled Persons’ Agreement, as follows:**
- 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 \$379,400,000 in total (Purchase Price). The Purchase Price will be owed to the Shareholders in equal portions (being \$189,700,000 each). The Crown holds, and will continue to hold, one special “Kiwi Share” in NAL.**
  - H. The Purchase Price allocation is:**
    - a) \$103,700,000 for the shares in NAL; and**
    - b) \$275,700,000 for the shares in PNL.**
  - I. Upon incorporation of IHL, Nelson City Council and Tasman District Council each subscribed for (and IHL issued) 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 will be paid for in accordance with IHL’s Shareholders’ Agreement. Since IHL’s incorporation on 17 January 2023, Deloitte has valued the shares in PNL and NAL at a total combined value of \$379,400,000. Accordingly, in order to capitalise IHL in an amount equal to the Purchase Price, Nelson City Council and Tasman District Council will each subscribe for a further 1,854,770 ordinary shares in IHL (being a further 3,709,540 ordinary shares in total) (Second Shares) at an issue price of \$100.00 per share (Second Share Issue). The consideration for the Second Share Issue will also be paid in accordance with the Shareholders’ Agreement.**
  - 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 requires the agreement of Nelson City Council and Tasman District Council as IHL’s shareholders and only entitled persons (as that term is defined in the Act) for all purposes (including to meet any requirement under the Act).
  - c) the Second 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, and for the purposes of clause 3.4 of IHL’s constitution.
  - d) 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, Second Shares and the New Shares.
- 2 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, Second Shares and the New Shares;
  - 3 the Shareholders’ Agreement, Agreement for Sale and Purchase of Shares, and Unanimous Shareholder Resolutions and Entitled Persons’ Agreement are approved and will apply in place of the form of these documents previously approved by Council.

**CARRIED**

**7 CONFIDENTIAL SESSION**

Nil

Councillor Paki Paki offered the closing karakia and the meeting concluded at 11.01 am.

Confirmed as a correct record of proceedings by resolution on (date).