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Report 96.246

File: M/1 1/1/1 (sm)

14 June 1996

Report to the Policy & Finance Committee

From: The Chairman

Port of Wellington Governance - Appointment of Directors

1. Purpose

- (1) To confirm the process for selection of nominees for appointment as Directors of Port of Wellington Ltd.
- (2) To enable Council to consider the question of appointing councillors as Directors.

2. Background

(1) Process for Appointment of New Directors

The Council needs to finalise the selection process to fill any vacancies for Directors occurring at the Company's next AGM in October. This question was previously discussed by Council in Public Excluded business on 12 December 1995. Questions discussed then included a report from Coopers & Lybrands on a process for selecting potential Directors.

(2) Appointment of Councillors as Directors

- (a) Council resolved on 12 December 1995 that the following motion (moved by Councillor Foot, Seconded Councillor Werry) should lie on the table:

"That two Wellington Regional Councillors be appointed to the Board of Directors of the Port of Wellington Ltd. "

- (b) Subsequently, at the meeting of Council on 18 April 1996, Councillors Foot and Werry had given notice of their intention to move and second the following motion:

“That Wellington Regional Council appoint a councillor to the Board of Directors of the Port of Wellington Ltd!”

Councillor Foot said the aim of the Notice of Motion was to have a public debate on the question of whether or not a councillor should be appointed as a Director of the Port of Wellington Ltd, but he did not proceed with it at that meeting. At the time I advised Council that there were a number of matters under consideration and it would be more appropriate to have a full discussion on the question at a later date.

3. Comment

(1) Process for Appointment of Directors

- (a) Apart **from** casual vacancies, appointment of non executive directors is voted on at the Annual General Meeting of the company. Council's votes are exercised by duly authorised proxies.

Formal notification of any vacancies is included in the notice of the Annual General Meeting. The tentative date of the 1996 AGM is 24 October.

- (b) The Audit Office Report also recommends a process for appointment of Directors very much along the lines we have in mind, viz:

340 *Local authorities should institute a process whereby they select people with appropriate skills to be directors of their companies. This should **include determining the skills required, seeking applicants for the position, matching the applicants' skills to the skills required, and interviewing candidates.** This process may involve advertising or using consultants.*

- (c) Council had agreed on 12 December 1995 to a process that included identification of potential Directors by both advertisement and direct approach. It was originally proposed that membership of the screening group, which **would make recommendation to Council**, include the Chairman, Deputy Chairman and as appropriate the' General Manager and/or Chief Financial Officer.

- (d) It is clear however that the screening group should include a representative of the Manawatu-Wanganui Regional Council - as the other shareholder - and the Chairman of the Port of Wellington Ltd Board. The appropriate membership would seem to be the Chairpersons of the WRC, the Manawatu-Wanganui Regional Council and Port of Wellington Ltd. Also the appointment process envisaged by Coopers & Lybrand may be more complex than is necessary and it would be appropriate to leave final determination of the specifics of the selection process to the screening group.
- (e) The screening group's recommendations will need to be considered by Council in sufficient time to enable formal nominations to be submitted to the Company Secretary in time for inclusion in the agenda for the Annual General Meeting.

(2) Appointment of Councillors as Directors

I believe it is now timely to formally debate this issue and determine a clear Council policy. I make the following comments to assist with the debate:

- (a) Councillors have a copy of an Audit Office Report on Governance of Local Authority Trading Activities. A copy is Tabled.

A number of conclusions and recommendations in that Report are highly relevant to our discussions.

- (b) The roles of the Councils (and by implication the councillors) are about accountability relationships. The Audit Office review focused on what it saw as the two key relationships, viz:

- * The respective roles of the local authority shareholder and the company, and the processes for appointing a board of directors to oversee the management of the business and add value to the shareholder's investment; and

- * The way in which local authority shareholders monitor the performance of companies in which they have an interest. (This includes the setting of appropriate performance standards and measuring performance).

- (c) The question of dual roles is also discussed in the Audit report. It concludes (in paras 324 and 325 on pages 14 and 15) that:

324 Nominee directors face conflict between their responsibilities to council companies and their role as members of shareholding local authorities. Elected representatives are responsible for promoting community interests which may conflict with the commercial objectives of council companies. Chief executives also face conflicting interests as both directors and advisors to the council.

325 Nominee directors are not a substitute for a formal monitoring relationship between the council company and the shareholding local authority.

- (d) These conclusions are embodied in the following recommendation:

326 Elected representatives appointed to a board of directors have a primary responsibility to the company which they should not confuse with their role as councillors. Local authorities should specify the role and responsibilities of elected representative directors to boards in order to make this distinction clear. Nominee directors should not be seen as a substitute for a formal monitoring relationship between the council company and the shareholding local authority.

Concerning the final part of conclusion 324 regarding Chief Executives - The WRC has appointed our Chief Financial Officer David Benham as Chief Reporting Officer on Port of Wellington matters to overcome this conflict.

- (e) One such recommendation (No. 342) is pertinent to discussion on appointing Councillors as Directors.

342 Local authorities wanting to appoint elected representatives to a company board should make this selection on the basis of the commercial skills and experience of the councillors concerned. They should use the same selection criteria for these appointments as for the appointment of non-councillor Directors.

- (f) Councillors are reminded that no more than two Directors may be members or officers of either council.

- (g) Councillors are also aware that the Chairman of the Manawatu-Wanganui Regional Council - the other shareholder - does not support the appointment of Councillors as Directors. I believe the views he has expressed reflect those of that Council.

- (h) It is my understanding that Wellington City Council is reviewing its policy of having **councillors** as Directors of LATES owned by that Council. I have asked the General Manager to **further** investigate this and report at the meeting.
- (i) For the reasons stated above, it is my strong recommendation that councillors not be appointed as Directors of Port of Wellington Ltd.

4. Recommendations

- (1) *That determination of process for selection **as** suitable candidates for appointment as directors be delegated to the Screening Group.*
- (2) *That the Screening Group comprise:*

Chairperson Wellington Regional Council
*Chairperson **Manawatu-** Wanganui Regional Council*
Chairperson Port of Wellington Ltd
- (3) *That the Screening Group be required to report its proposals by 31 August 1996.*
- (4) *That Councillor Foot be given the opportunity to move a motion concerning appointment of councillors as Directors of Port of Wellington **Ltd**.*
- (5) *That Council note my **firm** view that Elected Members of this Council not be appointed as Directors of Port of **Wellington Ltd**.*



STUART MACASKILL
Chairman