

Subject: Workshop: Constitution Review and Letter of Expectation for
Gisborne Holdings Ltd

Prepared by: Melanie Walker (Legal Counsel)

Meeting Date: 30 November 2015

Report to FUTURE TAIRĀWHITI for decision

SUMMARY

At the meeting of Council held on 19 November 2015 Report 15-419 was left to lie on the table for a decision following a workshop at this meeting of Future Tairāwhiti. The Report is attached for reference.

Gisborne Holdings Limited has provided some feedback on the draft documents. Details of that feedback and officers recommendations on the feedback are attached to this report. A revised copy of the draft constitution incorporating the changes suggested by Gisborne Holdings Ltd will be circulated separately.

It is intended that the Report 15-419 be considered at the extraordinary meeting of Council to follow this committee meeting where a decision on the final form of the documents can be adopted, incorporating if necessary feedback from the directors of Gisborne Holdings Limited.

RECOMMENDATIONS

That the Committee

1. receives the report
2. Recommends that Council
 - a) adopts the versions of the Constitution and Letter of Expectation consistent with the decisions made at the 30 November 2015 Future Tairāwhiti Committee meeting.



Melanie Walker
Legal Counsel



Barry Vryenhoek
Operations Group Manager

Suggestions by GHL

As an overview, the GHL board felt stability of the Board and the ability to “inform” the director selection process is key to enabling GHL to grow and deliver increased returns over time. Constant change or misinterpretation of intention would hinder the overall objective of growth.

Because of the above the intention with a board of only five it is not desirable to have two retiring directors every year. If there were 6, this would be less of an issue.

The other points were meant to add weight to the overall goal of growth and stability.

Letter of Expectation

The directors are reasonably comfortable with the Letter of Expectation.

The only suggestion is to change clause 2(f) from:

“Decisions that require Council approval are” to: “Decisions not already approved by a Statement of Intent that require Council Approval are:”

Constitution

Comments arising out of the constitution are:

Clause	GHl suggested change	Officer Comment
3.2	<p>The clause states “The Company must comply with all applicable statutory and regulatory obligations relating to Maori and the Treaty of Waitangi, including those in the Local Government Act”</p> <p>Add the following words at the end of clause 3.2:</p> <p>“, which apply to a Council Controlled Organisation”</p>	<p>These words clarify that the company is only obliged to comply with the statutory obligations of a CCO in these circumstances, not a local authority.</p>
5.2	<p>Half-yearly reports are preferred to reduce the cost of reporting</p>	<p>See discussion of Option 1 in Report 15-419</p>
7.4	<p>No set term for director appointments</p> <p>“Each year at the AGM 1/3 (rounded down to the nearest whole number) of the directors shall retire from office. If an insufficient number of directors volunteer to retire, the longest serving directors (as measurement from the date the directors were appointed or reappointed) shall retire.”</p>	<p>See discussion of Option 3 in Report 15-419</p> <p>In addition note that does mean that some directors may serve for a period of 5 years or longer. If a director does not volunteer to retire, and the board do not force the issue, they could potentially continue for some time.</p>

Clause	GHL suggested change	Officer Comment
New clause	<p>GHL sees merit in a new clause (to be inserted after 7.2 and before 7.3) for Council to consult with the Board prior to the appointment of new directors.</p> <p>(Note: GHL understands that consultation is an obligation to listen (not agree)).</p>	<p>Appointment of directors is to be in accordance with Council's appointment of Directors Policy under the LGA. There is currently no requirement to consult with the board however officers are to review this policy and bring it to Council early in the new year for discussion. On a practical level consultation illustrates a good relationship with the board.</p> <p>Councillors may choose to do this rather than be required to do this.</p>
7.6	<p>"The Board must appoint a Chairperson annually."</p>	<p>See discussion Option 4 Report 15-419.</p> <p>Note that the chair is currently appointed until required to retire on the rotation of directors which is every 2 years. This change means the chair could change annually.</p>
21.4	<p>It may be sensible to add the words:</p> <p>"in accordance with the resolutions of GDC" to restrict the power of a proxy to only vote as GDC decides.</p>	<p>Any appointment of a proxy would be by Council resolution and subject to the delegations given under that resolution. The additional words clarify this.</p>