



Report 07.201
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Committee Policy, Finance and Strategy Committee
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Proposed amendments to the constitutions of Greater Wellington Infrastructure Limited, Greater Wellington Rail Limited and Greater Wellington Transport Limited

1. Purpose

To consent to the directors of WRC Holdings Limited amending the constitutions of Greater Wellington Infrastructure Limited, Greater Wellington Rail Limited and Greater Wellington Transport Limited.

2. Significance of the decision

The matters for decision in this report do not trigger the significance policy of the Council or otherwise trigger section 76(3)(b) of the Local Government Act 2002.

3. Background and Comment

On 3 August 2006 Greater Wellington Infrastructure Limited, Greater Wellington Rail Limited and Greater Wellington Transport Limited were established. Constitutions for each of these three companies were adopted by WRC Holdings Limited on 12 September 2006.

On Saturday 13 October 2007 Greater Wellington Regional Council's triennial election will take place.

The constitutions of Greater Wellington Infrastructure Limited, Greater Wellington Rail Limited and Greater Wellington Transport Limited each state at clause 16.1 (e)

The office of Director is vacated if the person holding that office as a Shareholder Representative, ceases to be a member or employee of a Shareholding Local Authority.

"Shareholder Representative" is defined in the constitutions to mean a director who is a member or employee of a Shareholding Local Authority. At present, Ian Buchanan, Rick Long, Terry McDavitt and Margaret Shields are shareholder representatives on the boards of Greater Wellington Infrastructure

Limited, Greater Wellington Rail Limited and Greater Wellington Transport Limited. Their appointments are for a term ending 31 December 2007.

The effect of clause 16.1 (e) of the constitutions is that as soon as any Councillor who is a director ceases to be a Councillor they automatically cease to be a director as well.

3.1 Local Electoral Act

Section 115 of the Local Electoral Act 2001 (the Act) provides that:

- A candidate at a triennial election who is declared to be elected before polling day comes into office on polling day (13 October 2007 in the case of this year's election).
- In any other case, a candidate at any election comes into office on the day after the day on which the candidate is declared to be elected.

Section 116 of the Act provides that every member vacates office when the members elected at the next election come into office.

Legal advice suggests that the effect of these sections when read together is to create a vacation of office *irrespective of whether a member is subsequently re-elected, or declared to be elected before polling day and continues in office.*

Where a member continues in office following an election, the vacation is of a technical rather than real or practical nature. Nevertheless, when clause 16.1 (e) of the constitutions is considered in this context, all of the Shareholder Representatives will cease to be members – even if only in a strict legal sense – and therefore will vacate their office as directors shortly after the forthcoming election.

3.2 Constitutions of WRC Holding Limited, Port Investments Limited and Pringle House Limited

In the past the constitutions of WRC Holdings Limited, Port Investments Limited and Pringle House Limited had the same provision. However these constitutions were amended in 2004. This allows the Shareholder's Representative to stay in office until 31 December in an election year, or until the appointment is terminated by the shareholder.

In order to ensure that the new Council has sufficient time to properly consider the composition of the company boards following the 2007 triennial election, it is recommended that the same amendments be incorporated into the constitutions of the three recently created companies.

As 100 percent shareholder, WRC Holdings Limited will consider for approval amendments to the constitutions for the three companies. In accordance with its constitution, WRC Holdings Limited must first obtain the written consent of the Council before it amends the constitutions of the three companies.

4. Communication

No communication is necessary.

5. Recommendations

That the Committee recommends that Council:

- 1. **Receives** the report.*
- 2. **Notes** the content of the report.*
- 3. **Consents** to WRC Holdings Limited amending the constitutions of Greater Wellington Infrastructure Limited, Greater Wellington Rail Limited and Greater Wellington Transport Limited.*
- 4. **Requests** that the Chairman of the Council confirms this consent in writing to WRC Holdings Limited*

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