
Auckland Council Investments Limited Review

Purpose

1. To review whether some or all of the functions of Auckland Council Investments Limited (ACIL) could be carried out by existing parts of the Council group, and whether as a consequence ACIL could be disestablished or modified.

Summary

2. ACIL was established on amalgamation of Auckland Council with the objective to bring a strong commercial focus to the ownership and governance of council's major investment assets and to provide an efficient structure for the ownership of those assets.
3. ACIL is a council-controlled organisation and must achieve the objectives of Auckland Council as specified in its Statement of Intent. ACIL is also subject to council-controlled organisation accountability requirements stipulated in the Local Government Act 2002, including half yearly and annual reporting, and auditing requirements.
4. ACIL's operating expenditure is approximately \$1,069,000 per annum and includes staff costs, directors' fees, audit fees and professional services. Disestablishment of ACIL could result in a maximum of \$1,069,000 of savings.
5. ACIL currently has a 22.3 per cent shareholding in Auckland International Airport Limited (AIAL) and a 100 per cent shareholding in Ports of Auckland Limited (POAL).
6. ACIL is currently a passive shareholder of AIAL shares. Council parent has the expertise to hold AIAL shares in its Treasury and Financial Transactions team so the implications of a change of ownership on the AIAL shares is likely to be minor.
7. POAL is a port company and is subject to legislative provisions of the Port Companies Act 1988 and the Local Government Act 2002. A change in ownership of POAL shares may have legislative, financial and other implications.
8. It is noted that any proposal is likely to require consultation under s 97 of the Local Government Act 2002. Should a proposal not meet the threshold of s 97 of the Local Government Act 2002 it is considered that the proposal is of high significance under Auckland Council's Significance and Engagement Policy, and therefore council is required to consult on this matter.

Options

9. The options and implications for ownership of the AIAL and POAL shares are contained in the attached table. It is recommended that these options be considered in terms of whether the option would have a positive, neutral or negative impact on the overall council group performance.
10. It is noted that as council operates as a single tax group, none of the options impact on the utilisation of AIAL imputation credits.
11. It is further noted that major 'change of ownership' contractual clauses would not be triggered by a transfer of assets between entities within the council group. However, some transaction costs would be likely to be incurred through a reconfiguration of ownership of AIAL and POAL shares. An estimate of these costs would require a full legal analysis as part of due diligence.

Risk Mitigation

12. The impact of the ownership of POAL on POAL's performance is a key consideration when determining whether or not to disestablish ACIL, and presents significant risks.

13. In the previous financial year POAL paid a dividend of approximately \$51.3m so any adverse impact on the performance of POAL resulting in a lower dividend return could offset potential savings from the disestablishment of ACIL.
14. In order to mitigate the risks of a lower dividend return from POAL shares, the governance arrangements of POAL would need to be configured in such a way that would enable POAL to fulfil its legislative requirement to operate as a successful business under s 5 of the Port Companies Act 1988.
15. Such governance arrangements could be established through a formal Memorandum of Understanding which could include the following aspects:
 - a) A formal communication protocol to categorise information that is (i) reasonably accessible, (ii) ordinarily considered to be commercially sensitive or (iii) out of scope for governance purposes.
 - b) Particular features of the appointment process to the POAL board, consistent with Auckland Council’s Board Appointment and Remuneration policy.
 - c) An endorsement of POAL’s five year business plan and 30 year Port Master Plan in order to provide certainty of continuity to POAL’s commercial customers.
 - d) The reservation of POAL’s right to develop its own policies relevant to port operation.
 - e) A clear delineation of the roles of the respective entities and the nature of their relationship(s).
 - f) The establishment of the process to manage discrepancies, for example, a dispute resolution clause or protocol.
 - g) Any other aspects considered necessary to enable POAL to fulfil its legislative mandate.

Attachments

No.	Title
A	Options table

Signatories

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Attachment A: ACIL Review Options table

	Rationale	Potential Savings	Implications Debt	Implications Rates	Potential Risks	Mitigation of Risks	Potential Opportunities
Option One: Status Quo	<i>ACIL provides POAL with stable commercial ownership that takes a medium to long term view of the ownership and investment in POAL. This is consistent with the long-term investment horizon of a business like POAL</i>	<ul style="list-style-type: none"> No savings 	<ul style="list-style-type: none"> No direct implications As POAL's debt is consolidated into the group accounts, POAL's borrowings impact on group debt headroom. Currently there is limited visibility of POAL's capital programme, and the implications for council's debt profile 	<ul style="list-style-type: none"> No implications 	<ul style="list-style-type: none"> No savings achieved, and no opportunity to realise benefits of alternative configuration Having POAL at arms-length means they are currently one step removed from council's planning and reporting processes. This has limited the opportunities for direct engagement on issues such as financial planning. More explicit instruction would need to be given to ACIL to actively engage POAL in these processes Currently POAL is not engaged with the rest of the council group on matters such as joint procurement, insurance etc. These areas could be explored for any potential savings, or opportunities to better manage group risks. However, from a practical perspective, these opportunities are more difficult to explore with POAL one step removed from council 	<ul style="list-style-type: none"> Options to maximise savings within current structure could be explored (e.g. less directors on ACIL Board) Clearer strategic direction and coordination in respect of POAL could be communicated to ACIL through SOI process POAL could be engaged directly in relation to opportunities to save costs and manage group risk. 	<ul style="list-style-type: none"> Retaining the current structure provides continuity and certainty to POAL and its customers No impact on dividends and share value (particularly in the case of POAL) Avoid possible duplication of transaction costs if a decision is made in the future to make changes to the ownership structure of POAL Ownership of POAL is managed by a commercial entity, and is not subject to potential changes in political direction.
Option Two: AIAL shares transferred to Council, POAL	<i>Potential to achieve savings through disestablishment of ACIL, whilst managing the</i>	<ul style="list-style-type: none"> Estimated \$500,000 - \$1,069,000 	<ul style="list-style-type: none"> As for option one 	<ul style="list-style-type: none"> Estimated \$500,000 - \$1,069,000 	<ul style="list-style-type: none"> Some of the potential savings may be offset by requiring expertise in the entity that owns the POAL shares Transaction costs to transfer assets have not been quantified as yet. Most of these costs would relate to a due diligence exercise relating to any contracts that POAL has that have a 	<ul style="list-style-type: none"> Alternative CCO board composition could be adapted to reflect expertise required to strategically direct POAL as per Auckland Council's 	<ul style="list-style-type: none"> Improved collaboration between alternative CCO and POAL Maintain distance between shorter term political decision making and POAL's long term

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transferred to alternative CCO	<i>ownership of POAL at arms-length to council</i>				<p>“change of ownership” provision. There may also be one off staff redundancy costs.</p> <ul style="list-style-type: none"> There would be legal implications in the case of Auckland Transport being the alternative CCO, as Auckland Transport’s activities may be limited by the Local Government (Auckland Council) Act There is no CCO with 100 per cent alignment with POAL, so strategic focus and board composition of alternative CCO could be impacted. There may be a strategic misalignment between the primary function of an alternative CCO and POALs primary objective under the Port Companies Act , being to operate as a successful business 	<p>Board Appointment policy.</p> <ul style="list-style-type: none"> Alternative CCO constitution could be recast to ensure that purpose is not inconsistent with Port Companies Act directive Clarification of strategic focus and alignment between alternative CCO and POAL directives could be mitigated using SOI mechanism MOU could be drafted to establish roles of entities and their relationship(s). 	<p>commercial direction</p> <ul style="list-style-type: none"> Incremental gain through the reduction in number of CCOs to manage
Option Three: AIAL and POAL shares transferred to Council	<i>Potential to achieve savings through disestablishment of ACIL</i>	<ul style="list-style-type: none"> Estimated \$500,000 - \$1,069,000 	<ul style="list-style-type: none"> Bringing POAL into Council ownership would result in better visibility of POAL’s capital programme and debt profile 	<ul style="list-style-type: none"> Estimated \$500,000 - \$1,069,000 	<ul style="list-style-type: none"> Transaction costs to transfer assets have not yet been quantified. Most of these costs would relate to a due diligence exercise relating to any contracts that POAL has that have a “change of ownership” provision. There may also be one off staff redundancy costs. Shorter term political decision making could be in conflict with POAL’s long term commercial direction mandated by Port Companies Act. This could 	<ul style="list-style-type: none"> Auckland Council’s Board Appointment policy could be utilised to ensure a robust process appointing to POAL Board A formal communication protocol or policy could be established to clarify the 	<ul style="list-style-type: none"> Better understanding of POAL business through direct reporting to the governing body Easier to implement future port study outcomes with direct ownership Potential incremental savings through involvement of POAL in group procurement,

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				<p>be mitigated through putting in place dispute resolution processes if council decisions are perceived to conflict with POALs objective of operating as a successful business</p> <ul style="list-style-type: none"> Some costs currently incurred by ACIL would be incurred elsewhere, e.g. Work commissioned by ACIL to peer review POAL capital investment plans. Direct ownership may result in the resignation of some directors and may reduce the number of directors willing to apply for a role on the POAL board. 	<p>relationship between the entities and respective roles, as well as enhance communication overall</p> <ul style="list-style-type: none"> Approval of a long term strategic plan for POAL to give certainty to POAL customers SCI process clarified and utilised to communicate strategic direction MOU could be drafted to establish roles of entities and their relationship(s). 	<p>insurance, etc.</p>	
<p>Option Four: ACIL's portfolio expanded</p>	<p><i>Potential to achieve savings through better use of ACIL's commercial expertise</i></p>	<ul style="list-style-type: none"> Further investigation required 	<ul style="list-style-type: none"> No direct implications As for option one. 	<ul style="list-style-type: none"> No implications 	<ul style="list-style-type: none"> There are not many other commercial assets across Council group so the scope limited Transaction costs of transferring assets could be significant Benefit of managing commercial assets together is in economies of scale. ACIL may need to hire expertise to achieve scale, thereby offsetting any benefits. As in option one, council currently does not have good visibility of POAL capital programme, and POAL is not engaged in other group wide 	<ul style="list-style-type: none"> Clearer strategic direction and coordination in respect of POAL could be communicated to ACIL through SOI process 	<ul style="list-style-type: none"> Achieve better value for money from ACIL

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				initiatives to try to achieve savings and manage risks.		