

# Proposal to Disestablish Auckland Council Investments Limited

## Purpose of the Report

1. To provide analysis and recommend actions associated with the Long-term Plan 2018 – 28 proposal to disestablish the council-controlled organisation Auckland Council Investments Limited, with the investments in Auckland International Airport Limited and Ports of Auckland Limited to be transferred to council parent.

## Proposal Summary

2. Council sought the community's views on a proposal to disestablish ACIL with the investments in AIAL and POAL to be transferred to council parent as part of LTP consultation. The proposal to disestablish ACIL was introduced into the LTP through the Mayor's Intent to the LTP.
3. Should the proposal be adopted, ACIL will be disestablished with council to become the direct shareholder of the 22.3% shareholding in AIAL and 100% shareholding in POAL currently held by ACIL.
4. It is considered that this would result in savings of approximately \$500,000 - \$800,000 per annum from the disestablishment of ACIL, based on ACIL's current operating expenditure and an assessment of the functions that would be absorbed by council. Further incremental savings may also be obtained through involvement of POAL in group processes.
5. It is further considered that this would result in improved strategic alignment between POAL and the council group on planning and strategic matters.
6. The merits of the proposal rely on the preservation of the commercial return from AIAL and POAL, and it is noted that a change in ownership of the assets presents the risk of negatively impacting the commercial return from these assets.
7. In particular, this risk necessitates an effective relationship being established between POAL and council as a 100% shareholding carries several shareholder roles and functions. Council and POAL have agreed a draft memorandum of understanding setting out the relationship between the entities, to be adopted should ACIL be disestablished.
8. This report sets out the proposal merits and provides recommendations to be considered should the proposal to disestablish ACIL be adopted as part of the LTP. These recommendations should therefore be considered concurrently with the decision to disestablish ACIL.

## Recommendations

9. It is recommended that the Finance and Performance Committee resolve the following recommendations should the proposal to disestablish ACIL be adopted:
  - a) approve a shareholder directive to ACIL relating to the transfer of all assets, liabilities and obligations of ACIL (including the shares in POAL and AIAL) to council.
  - b) approve a shareholder directive to remove ACIL from the companies register following the transfer of all assets, liabilities and obligations to council.
  - c) adopt the MoU between council and POAL contained at Appendix A, including:
    - (i) Annex A: Board Appointment and Remuneration Policy regarding appointments to the board of Ports of Auckland Limited
    - (ii) Annex B: Communication Schedule
  - d) recommend that the Appointments, Performance Review and Value for Money Committee adopt a revised Board Appointment and Remuneration Policy that reflects Annex A of the MoU between council and POAL.

- e) recommend that the Governing Body adopt relevant amendments to its Terms of Reference to reflect the transfer of the assets, liabilities and obligations of ACIL (including the transfer of shares in POAL and AIAL) to council.
- f) delegate to the chief executive the function to authorise any action necessary or desirable to effect the transfer of the assets, liabilities and obligations of ACIL (including the transfer of shares in POAL and AIAL) to council, and the disestablishment of ACIL.
- g) note the relationship principles document in respect of council and AIAL contained at Appendix B.
- h) note that all prior resolutions, delegations, approvals, agreements, authorisations by the Governing Body or its committees relating to ACIL now apply to council.

## Context

- 10. ACIL was established on amalgamation of council with the objective of bringing 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 on behalf of the people of Auckland.
- 11. ACIL is a council-controlled organisation and must achieve the objectives of council as specified in its Statement of Intent. ACIL is also subject to council-controlled organisation accountability requirements stipulated in the LGA 2002, including half yearly and annual reporting, and auditing requirements.
- 12. ACIL's operating expenditure is approximately \$1.1m per annum and includes staff costs, directors' fees, audit fees and professional services.
- 13. ACIL currently has a 22.3% shareholding in AIAL and a 100% shareholding in POAL on behalf of the people of Auckland. At 30 June 2017, these investments were worth approximately \$1.9b (AIAL) and \$1.1b (POAL). Council received a combined dividend of approximately \$85.9m from ACIL for the financial year 2016/17. It is noted that on establishment, ACIL's portfolio also included a diversified assets portfolio, redeemable preference shares and shares in Auckland Film Studios Limited.
- 13. The Mayor's Intent to the LTP requested that officers provide advice as to whether the functions of ACIL could be carried out by existing parts of the council group, resulting in ACIL being disestablished.
- 14. On 11 December 2017 the Governing Body resolved the items for consultation for the LTP, including:  
(Resolution number GB/2017/160):  
h) *disestablishment of the council-controlled organisation Auckland Council Investments Limited with the investments in Auckland International Airport Limited and Ports of Auckland to be transferred to council parent.*
- 15. This proposal formed part of the consultation material for the LTP and was publicly consulted on during the consultation period (28 February – 28 March 2018). A decision is sought on this proposal as part of LTP decision making.

## Consultation Feedback

### General

- 16. Engagement feedback on this proposal amounted to 337 submissions, as follows:
  - 61% of submissions in support of the proposal to disestablish ACIL, with the key reasons being to achieve cost savings and improve alignment between council and POAL
  - 26% of submissions not in support of the proposal, with the key reason being the possible negative impact of political decision making in respect of commercial assets

- 13% of submissions on other matters, such as the sale or retention of assets, accountability of council-controlled organisations or the disestablishment of other council-controlled organisations

### Mana Whenua

17. This proposal does not address alternative ownership structures or uses of the AIAL and POAL shares outside of the council group. As such, the decision sought by this report would not have a bearing on these assets with wider impacts for mana whenua.
18. It is noted that, in particular, Ngāti Whātua o Ōrākei has an expressed interest in POAL, and the land on which POAL sits. Ngāti Whātua o Ōrākei was notified of this proposal and possible changes to the ownership of POAL accordingly.

### Local Board Views

19. This proposal is a matter for Governing Body, local boards have not been specifically engaged in respect of decision making on this matter.
20. It is noted that local board members were briefed on this matter on 25 October 2017, as part of a briefing on LTP matters proposed for consultation.
21. Through LTP regional feedback two local boards supported the proposal to disestablish Auckland Council Investments Limited (Waitākere Ranges and Waitemata) and two local boards did not support the proposal (Orākei and Papakura).

## Consideration

### Proposal

22. Staff provided preliminary advice to Finance and Performance Committee on this matter to inform whether the issue was to be consulted on as part of the Local Government Act 2002 consultation requirements for long term planning. That advice contained four options with respect to ACIL's functions, as follows:
  - (i) AIAL and POAL shares to be transferred to council, with ACIL to be disestablished (proposal)
  - (ii) Status quo, ACIL retained with current shareholding in POAL and AIAL
  - (iii) AIAL shares transferred to council, POAL shares transferred to alternative council-controlled organisation, with ACIL to be disestablished
  - (iv) ACIL's existing portfolio to be expanded
23. Option (iii) was considered to be legally complex and it was concluded that there would not be sufficient alignment between POAL and the activities of a possible alternative council-controlled organisation. Option (iv) was concluded to be ineffective as there are not enough commercial assets in the council group with common arrangements to make this option feasible. The decision to consult on options (i) and (ii) was made on this basis accordingly.
24. The proposal for decision is to disestablish ACIL with the shares in AIAL and POAL to be transferred to council parent. Should this proposal be adopted then the recommendations in this report are advised to support the implementation of the proposal.
25. ACIL is currently a passive shareholder of AIAL shares as the shareholding is a minority holding. Council 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 would likely be minor. The ownership interest of the AIAL shares is therefore not a significant consideration in this report due to the passive nature of the shareholding.
26. A relationship principles document outlining the relationship parameters between AIAL and council should ACIL be disestablished is attached at Appendix B.
27. The major consideration for this proposal is the ownership of POAL as the nature of the 100% shareholding is significant and includes a suite of shareholder functions (i.e. governance,

financial reporting and monitoring) that need to be appropriately operated by the shareholder of the entity.

28. The structure of council's ownership of POAL should aim to give council the ability to appropriately engage with POAL on planning and strategic matters and facilitate a medium to long term focus for POAL's commercial activity.
29. The proposal presents the potential to achieve savings through the disestablishment of ACIL, estimated at approximately \$500,000 - \$800,000 per annum. While some of ACIL's functions would be able to be absorbed by existing staff within council parent, it is possible that additional staff could be required.
30. Council has undertaken analysis of alternative financing streams in respect of POAL. One option identified is for POAL to run the port business as an operating company that leases land from council. This paper makes no comments on the merits of such an ownership structure, though it is noted that the proposal would not adversely impact any future decisions on alternative POAL ownership configurations.

### Analysis Summary

31. This proposal has been considered in terms of whether the option would have a positive, neutral or negative impact on overall council group performance. In the context of group performance, the key considerations are to:
  - (i) enhance the ability to engage with POAL on planning and strategic matters
  - (ii) ensure an optimal commercial return from the investments in AIAL and POAL, and
  - (iii) reduce council group costs
32. A fuller analysis of the proposal options and the considerations noted above is contained at Appendix C. A summary is provided in the following paragraphs.
33. In respect of (i), the proposal presents an opportunity to achieve improved alignment between POAL and the council group on planning and strategic matters. However, it is noted that there is nothing in the current ownership structure that would prevent ACIL or POAL providing more detail on aspects such as POAL's intended capex programme and business planning. Overall, it is considered that ACIL does not add value in respect of engagement with POAL on planning and strategic matters.
34. In respect of (ii), the proposal presents the risk of negatively impacting the commercial return from the interest in AIAL and POAL by changing the ownership structure of the assets. The risk in respect of the AIAL shares is assessed to be low, due to the anticipated role of council as a minor shareholder of the entity. The risk in respect of POAL is assessed to be notable due to the significance of the shareholder roles that come with a majority shareholding, as well as that shareholding being held by council which is subject to political decision making. However, it is considered that the MoU agreed between council and POAL would mitigate this risk by clearly establishing the relationship framework between council and POAL. Overall, it is considered that ACIL adds value in terms of ensuring an optimal commercial return from the investments in AIAL and POAL by providing a commercially focused ownership model which is removed from the shorter term focus of political decision making.
35. In respect of (iii) the proposal presents an opportunity to reduce council group costs by removing ACIL's opex of approximately \$1.1m, though it is noted that some costs would still exist (e.g. audit fees, staff costs) so savings of between \$500,000 - \$800,000 are anticipated. Further, incremental savings may be achieved through POAL's involvement in group processes, though it is noted that nothing in the existing ownership structure precludes this.
36. To conclude, the proposal to disestablish ACIL presents strategic merits as long as the commercial return from the investments can be retained under the proposed alternative ownership scenario. It is suggested that these two outcomes can be achieved by adopting the proposed MoU that clarifies POAL and council's respective roles. The proposed Board Appointment and Remuneration Policy (annexed to the MoU) will ensure that appropriately skilled directors will be appointed to the POAL board.

## Mitigation

37. POAL is a port company and is subject to legislative provisions including those of the Port Companies Act 1988 and the Companies Act 1993. Most notably, s 5 of the PCA 1988 requires port companies to have the principal objective to operate as a successful business.
38. POAL has been owned by ACIL since council amalgamated in 2010. Prior to this time POAL was owned by Auckland Regional Holdings, a subsidiary of Auckland Regional Council, from 2004 until 2010.
39. In order to facilitate a transition to a direct ownership relationship between council and POAL, should a decision to disestablish ACIL be made, a MoU between council and POAL has been agreed. This MoU was provided to the Finance and Performance Committee on 1 May 2018 via memorandum to committee members.
40. The MoU is contained at Appendix A and is intended to provide a framework for the relationship between council and POAL. The MoU addresses the following aspects:
  - Objectives of the entities
  - Core principles underpinning the governance relationship between the entities
  - Governance framework, including relevant legislation
  - Decisions relating to the operation of POAL, the Statement of Corporate Intent mechanism and approvals and conferrals between the entities
  - Process for appointing to the board of POAL, with the relevant policy attached at Annex A to the MoU
  - Monitoring, liaison, reporting and disclosure of information between the entities, with a detailed communication schedule attached at Annex B to the MoU. This includes a 'no surprises' clause between the entities
  - Dispute resolution clause
41. The process undertaken to draft this MoU included three meetings between POAL executive management and advisors, senior council staff, and mayoral office staff. This process was iterative and collaborative, with the finalised documents representing a common view of the governance relationship to emerge between council and POAL, should a decision to disestablish ACIL be made.
42. This MoU does not hold a legal status and will therefore not be legally binding should it be adopted. However, this MoU references processes that are established by legislation (e.g. SCI requirements consistent with the PCA 1988) and articulates a framework for the effective governance of POAL should a decision to disestablish ACIL be made, resulting in council becoming the direct shareholder of POAL.
43. This MoU has been socialised with the POAL board, and an opportunity for the POAL board to provide feedback was given. The POAL board intend to adopt this MoU should a decision to disestablish ACIL be made.
44. Should a decision to disestablish ACIL be made, it is recommended that this MoU be adopted concurrently in order to establish an effective relationship between council and POAL.

## Changes to Board Appointment and Remuneration Policy

45. Should ACIL be disestablished, POAL will become a 'council organisation' under the legislative definition of the LGA 2002, and will therefore be subject to the board appointment process set out in council's Board Appointment and Remuneration Policy (required by s 57 of the LGA 2002). It is noted that port companies are statutorily excluded from being council-controlled organisations under the LGA 2002.
46. In particular, the risk of a negative impact on the commercial return from POAL noted at paragraph 33 is partly due to the perception of appointments to the POAL board being subject to political decision making. This aspect is of particular significance to POAL's relationship with customers, which directly impacts POAL's ability to generate revenue.
47. It is noted that ACIL removed this perceived risk by operating at an arms-length to council.

48. Should a decision to disestablish ACIL be made, it is recommended that a process be put in place that would remove the perception of political decision making in respect of appointments to the POAL board.
49. It is therefore recommended that the committee recommend that the Appointments, Performance Review and Value for Money Committee adopt a revised Board Appointment and Remuneration Policy that sets out the process for appointing to the POAL board, based on the agreed process contained in Annex A to the MoU. It is considered that this process would mitigate the perceived risk noted above.
50. The agreed process reflects the Financial Markets Authority Corporate Governance guidelines and reflects the board appointment practice that publicly listed companies generally undertake. Moreover, the agreed process recognises POAL's function as a commercial entity, while taking into account council's role as a shareholder.
51. This agreed process includes the following aspects:
- **Board member competencies, skills and knowledge:** to be determined by the chair of the POAL board and the Mayor
  - **Candidate search:** to be undertaken by a specialist board appointment firm
  - **Screening and shortlisting:** to be undertaken by a committee of the POAL board. A shortlist will be provided to the Mayor, who will have an opportunity to advise if any shortlisted candidates will be unsuitable for appointment to the POAL board
  - **Interviewing and assessment of candidates:** to be interviewed and assessed by the POAL board. Reference checks will be performed at this stage of the process (including an assessment of actual or perceived conflicts of interest)
  - **Recommendation of candidate:** through the interviewing and assessment of candidates, the POAL board will then recommend a preferred candidate for appointment
  - **Appointment:** to be undertaken by the POAL Appointments Panel (comprised of Chair of POAL board, the Mayor and the chief executive of council)
  - **Remuneration:** to be determined by the Appointments, Performance Review and Value for Money Committee, based on a benchmarking exercise undertaken by POAL board in conjunction with an independent assessment
  - **Removal of board members:** POAL board members may at any time be removed from office by ordinary resolution of the shareholder(s) as set out in POAL's constitution
52. It is noted that the roles of the Appointments, Performance Review and Value for Money Committee, the Mayor and the chief executive in the agreed process would be supported by independent advice from the CCO Governance and External Partnerships team.

### Process to Disestablish Auckland Council Investments Limited

53. Some transaction costs would be likely to be incurred through a reconfiguration of ownership of AIAL and POAL shares. An estimate of these transaction costs (accounting and due diligence) is approximately \$290,000, and can be detailed as follows:

Share transfer execution, legal advice and due diligence	\$65,000
Employee redundancies	\$105,000
Director liability insurance	\$120,000
<b>Total</b>	<b>\$290,000</b>

54. It is noted that a proportion of these costs has already been incurred in the preparation of the due diligence associated with the proposal, required to accurately assess the merits of the proposal.

55. Major 'change of ownership' contractual clauses in POAL's material and operating contracts are unlikely to be triggered by a transfer of assets between entities within the council group, though some transaction costs would be likely to be incurred in relation to the transfer of POAL and AIAL shares as noted above.
56. It is noted that employee redundancy costs will not be incurred where suitable redeployment options within council (in line with the employees' employment agreements) are offered on similar and no less favourable terms and conditions and accepted by employees.
57. There are no tax implications associated with the transactions proposed as part of the proposal to disestablish ACIL.

## Risks

### Proposal to Disestablish ACIL

58. The key risk associated with the proposal is that the commercial return from the assets may be negatively impacted by the change of ownership of the assets. As noted above in the analysis summary, this risk is considered low in respect of the dividend return from the AIAL shares, and is considered notable in respect of the dividend return from the POAL shares.
59. The risk stems from the proximity of political decision making to the commercial operation of POAL that would occur should ACIL be disestablished and council become the direct owner of POAL. This risk is further noted above in respect of the process to appoint to the board of POAL. Political decision making is generally considered to be shorter term and based on the election cycle, whereas the successful commercial operation of POAL relies upon certainty for POAL's customers, which is best achieved through a medium to long term business horizon.
60. POAL paid a dividend of \$53.7m to ACIL for the financial year 2016/17. Any adverse impact of a change of ownership on the performance of POAL resulting in a lower dividend return could therefore offset potential savings from the disestablishment of ACIL.
61. A lower dividend return from POAL would present financial risk for council, any perceived fragmentation in the relationship between POAL and council as a result of the change of ownership would present reputational risk for council.
62. In order to mitigate the risk of a lower dividend return from POAL or relationship fragmentation between POAL and council, the relationship framework between council and POAL needs to be configured in such a way that would ensure that POAL's commercial mandate would be preserved, notwithstanding council's proposed role as shareholder. It is considered that the MoU agreed between POAL and council aptly sets out such arrangements, and mitigates the risk of a negative impact on POAL's dividend or the relationship between POAL and council accordingly.
63. Part of this risk mitigation requires the adoption of a revised Board Appointment and Remuneration Policy which reflects to policy position set out in the MoU between council and POAL. It is therefore recommended that the Appointments, Performance Review and Value for Money Committee adopt such a policy.

### Status Quo

64. The key risks associated with the status quo include the loss of potential to achieve savings through the disestablishment of ACIL and possible involvement of POAL in group processes, as well as the possible negative impact of a lack of strategic alignment between the council group and POAL on planning matters in the longer term.
65. These matters present financial risk for council through the direct loss of savings, but also broadly through the financial implications that could result from a lack of strategic alignment (including poor visibility of POAL's capex programme) across the council group. A lack of strategic alignment could also result in strategic risks for council, and may result in a negative perception of council from the perspective of reputational risk. It is noted that there is nothing

in the existing ownership structure that precludes improved strategic alignment, so this risk could be mitigated by working with ACIL to achieve such outcomes within the existing structure.

## Next Steps

66. Should a decision to disestablish ACIL be made, staff will implement the disestablishment of ACIL as per the recommendations in this report. Staff will report back to Finance and Performance Committee through memorandum upon the effective disestablishment of ACIL, anticipated to be complete by the end of 2018.
67. Staff will work with ACIL, POAL and AIAL to transfer the shares in AIAL and POAL to council as soon as practicable following the commencement of the LTP on 1 July 2018. A shareholder directive will be communicated to the ACIL board in respect of the transfer price and date as per recommendation (a).
68. The ACIL board have communicated an intention to resign following the finalisation of the ACIL group reporting pack for the financial year 2017/18, should a decision to disestablish ACIL be made. Staff will appoint director(s) to the board of ACIL through the Appointments, Performance Review and Value for Money Committee to coincide with resignation of the existing ACIL board, in order to assist with any actions that would be required to finalise the disestablishment of ACIL.
69. Staff will provide the POAL board with the MoU contained at Attachment A for approval by the POAL board, as recommended for adoption by council at recommendation (c).
70. Staff will report a revised Board Appointment and Remuneration Policy for adoption by the Appointments, Performance Review and Value for Money Committee as per recommendation (d).
71. Relevant adaptations to the Governing Body Terms of Reference will be reported for adoption as per recommendation (e).
72. Staff will provide AIAL with the relationship principles document contained at Attachment B for reference, as noted at recommendation (g).

## Appendices

- Appendix A: Proposed Memorandum of Understanding Auckland Council and Ports of Auckland Limited
- Appendix B: Relationship Principles Auckland Council and Auckland International Airport Limited
- Appendix C: Analysis of Proposal to Disestablish Auckland Council Investments Limited.

# Proposed Memorandum of Understanding between Auckland Council and Ports of Auckland Limited

## 1. Purpose

This memorandum of understanding sets out the framework agreed by Auckland Council and Ports of Auckland Limited in respect of the governance relationship between the two entities.

## 2. Objectives

The objectives of council and POAL in establishing this memorandum are to ensure that the governance relationship between council and POAL:

- 2.1 enables POAL to fulfil its legislative requirement to operate as a successful business under the Port Companies Act 1988, and that this requirement and the confidence of POAL's stakeholders is not prejudiced by council being the direct owner of POAL's shares;
- 2.2 accords with the legal roles and responsibilities of council and POAL and their respective governing bodies and sound governance practice;
- 2.3 recognises the importance of POAL as a key part of Auckland's infrastructure and a key investment of council, noting the commercial importance of POAL to the Auckland region and nationally;
- 2.4 enhances the ability of council and POAL to engage with one another on planning and strategic matters in accordance with their respective roles and responsibilities;
- 2.5 provides opportunities to reduce council group costs where possible.

## 3. Core Principles

- 3.1 Council and POAL acknowledge POAL's principal statutory objective to operate as a successful business and each will work within their respective roles to assist that objective.
- 3.2 Council and POAL acknowledge that the board of POAL, and the council as shareholder have important roles and responsibilities, and each will respect the role and responsibilities of the other entity and work constructively with each other on that basis.
- 3.3 Any disputes arising between council and POAL in relation to governance matters will be addressed under an agreed process as set out in this memorandum.

## 4. Key Elements

### 4.1 Governance Framework

The governance framework comprises:

*In relation to both council and POAL*

- the Port Companies Act 1988

- the Companies Act 1993
- the constitution of POAL
- good governance practice (e.g. IOD and FMA corporate governance guidance)
- this memorandum of understanding

*In relation to council but not POAL*

- the Local Government Act 2002
- the Local Government (Auckland Council) Act 2009
- the Local Government Official Information and Meetings Act 1987

#### **4.2 Decisions in relation to the operation, business and affairs of POAL**

The parties acknowledge that, subject to applicable laws:

- 4.2.1 all decisions relating to the operation of POAL shall be made by the board or under its authority, in accordance with POAL's Statement of Corporate Intent.
- 4.2.2 the business and affairs of POAL shall be managed by, or under the direction or supervision of the board. This includes, but is not limited to, decisions in respect of:
- business strategy and business performance reporting
  - business and operating policies
  - investment, divestment and joint venture decisions
  - treasury, financing and insurance decisions
  - chief executive appointment, removal and remuneration
  - employment decisions, including recruitment, remuneration and industrial relations
  - procurement decisions
  - services offered and pricing decisions
  - stakeholder engagement and external communications

#### **4.3 POAL's Statement of Corporate Intent**

- 4.3.1 The parties shall observe s 6(3) of the Port Companies Act 1988 in relation to POAL's SCI. The SCI must be completed in accordance with ss 8 – 13 of the act.
- 4.3.2 The parties acknowledge the expectation that POAL's SCI will continue to be developed in a way that presents continuity and consistency with previous SCIs.

#### **4.4 Approvals and conferrals between council and POAL on other matters**

- 4.4.1 POAL shall obtain the approval of council in its capacity as shareholder in respect of:
- any 'major transaction' within the definition of the Companies Act 1993;
  - any other matter for which approval is required by law, including under the relevant legislation or POAL's constitution.
- 4.4.2 The board of POAL, or management on its behalf, shall confer with council before the board of POAL makes any material changes in relation to its infrastructure,

investments or strategic direction from those set out in POAL's business plans (including POAL's 5-Year Business Plan and 30-Year Port Plan) as approved from time to time by the POAL board.

4.4.3 Council shall confer with the board of POAL, or management on its behalf, before council makes:

- any material decisions in relation to significant infrastructure or other developments which may have a material impact on POAL's current or future operations or capital requirements;
- any change to any policies or processes of council which relate to the matters as referred to in this memorandum.

#### **4.5 Board composition and appointments**

The parties note that council is required by s 57 of the Local Government Act 2002 to adopt a policy in relation to the appointment of directors of council organisations. The process for the appointment of directors to POAL's board will be contained in council's Board Appointment and Remuneration Policy, as set out in Annex A of this memorandum.

#### **4.6 Monitoring, liaison, reporting and disclosure of information**

Communications between council and POAL that relate to monitoring, liaison, reporting and the disclosure of information are set out at Annex B of this memorandum. The following elements are applicable:

- 4.6.1 Council's chief executive will establish a function which will act as the principal liaison point with POAL on the matters addressed in this memorandum including governance, monitoring, reporting, and the provision of information between both entities.
- 4.6.2 POAL will establish a reciprocal function within its executive management which will act as the principal liaison point with council on the matters addressed in this memorandum including governance, monitoring, reporting and the provision of information between both entities.
- 4.6.3 The Mayor and the chair of the POAL board, and the chief executives of both entities, respectively, shall have a direct channel of communication and meet formally at least quarterly each year.
- 4.6.4 The operation and effectiveness of the governance relationship between council and POAL (including the operation of this memorandum) shall be reviewed and discussed annually by the chief executives of both entities, and by the Mayor and the chair of the POAL board, respectively.
- 4.6.5 POAL shall provide half yearly and annual reports to council on the matters and within the timeframes specified in the Port Companies Act 1988, and as otherwise agreed between POAL and council. Such reports shall be addressed to the Mayor through the chief executive. Council and POAL shall also agree on arrangements

whereby POAL can provide periodically, and at least annually, a briefing to the Governing Body or appropriate Committee of the Whole of council.

- 4.6.6 POAL shall also provide any such other information to council as required under legislation or as council may reasonably request in its role as shareholder, unless such information is:
- ordinarily considered to be commercially sensitive, and to disclose it would prejudice POAL's legal or commercial position;
  - operational in nature or otherwise outside of the scope of information that may be required by a shareholder for governance purposes.
- 4.6.7 No confidential material shall be disclosed to any person who is not authorised to receive it, whether within or outside of council or POAL.
- 4.6.8 Both council and POAL will operate on a 'no surprises' basis with each other and endeavour to:
- inform one another prior to any significant decisions being made public, or the occurrence of any event that could be reasonably anticipated to have a high level of public interest.
  - provide one another with a copy of any media releases that relate to POAL, or activities of the council group that may have a bearing on POAL, prior to release.
- 4.6.9 The parties note that that any information that falls within this 'no surprises policy' shall be provided in accordance with Annex B of this memorandum, and that in any event the 'no surprises' policy does not require the disclosure of any information where such disclosure would be in breach of any legal or contractual obligation.

## **5. Dispute Resolution**

- 5.1 Council and POAL agree that any differences of view or disputes between them should be addressed frankly and constructively between the parties, and in the first instance, between the executive management of both parties.
- 5.2 If either party identifies a matter that requires escalation it shall be referred to the chief executives of both entities for discussion between them, and then at the request of either chief executive, to the Mayor and chair of the POAL board for discussion.
- 5.3 While nothing in this memorandum restricts the legal rights of either party, both council and POAL note the desire to resolve disputes through discussion, or if necessary through mediation, without recourse to litigation.

## **6. Status of Memorandum of Understanding**

- 6.1 This memorandum is not legally binding, although the parties may agree that protocols or arrangements in respect of any matter will be.
- 6.2 This memorandum, and any action under it, is subject to all applicable laws.
- 6.3 Any variation or termination of this memorandum shall require the approval of both parties.

# ANNEX A – Board Appointment and Remuneration Policy

## Part X: Ports of Auckland Limited

Part X of this policy applies to the board of Ports of Auckland Limited (POAL), a council organisation which is a port company under the Port Companies Act 1988.

### X.1 Eligibility for Appointment

#### X.1.1 Appointment of elected members of Auckland Council

Elected members of Auckland Council will not be appointed to the board.

#### X.1.2 Appointment of Auckland Council staff

Staff of Auckland Council will not be appointed to the board.

### X.2 Responsibility for Making Appointments

Appointments to the board are made by the Ports of Auckland Limited Appointment Panel (POALAP) under delegation from the Governing Body of Auckland Council.

The POALAP comprises:

- Mayor of Auckland Council, acting as the chair of POALAP
- Chief Executive of Auckland Council (or representative)
- Chair of the board of POAL

A report of any appointments or reappointments made by POALAP to the board will be provided to the Appointments, Performance Review and Value for Money Committee of Auckland Council.

### X.3 Reappointments

Where a board member is due to retire under POAL's constitution and is eligible for reappointment to the board and the board supports that reappointment, the chair of the board shall advise the chair of POALAP accordingly, and POALAP shall decide whether to make that reappointment.

### X.4 New Appointments

Appointments to the board that are not reappointments will be made in accordance with POAL's constitution and the following process:

#### X.4.1 Board member competencies, skills and knowledge

Once a vacancy has been established, the chair of the board and the Mayor will confer on and agree the skills, knowledge and experience required for that particular appointment. This may involve a consideration of the current composition of the board and a strategic review of future skill requirements.

#### **X.4.2 Candidate search**

The board will then appoint a specialist board appointment firm to facilitate the appointment process in accordance with this policy and a high standard board selection process.

#### **X.4.3 Screening and shortlisting**

The firm will provide the board with a long list of prospective candidates, having advertised for candidates and having searched the council's register of candidates. The long list will include any names of persons put forward for inclusion by either the Mayor or the chair of the board.

The chair of the board will advise the chair of POALAP of the names and relevant details of the persons on that long list and the chair of POALAP will advise the chair of the board if any person named on that long list is likely to be unacceptable to POALAP for appointment, and that person's name will be removed from the long list.

A committee of the board will from that long list prepare a shortlist for the position (normally of three to four candidates), to be interviewed by the board. The chair of the board will advise the chair of POALAP of the names and relevant details of the persons on that shortlist and the chair of POALAP will advise the chair of the board if any person named on that shortlist is likely to be unacceptable to POALAP for appointment, and that person's name will be removed from the shortlist.

#### **X.4.4 Interviewing and assessment of candidates**

The board will interview the shortlisted candidates and perform reference and other checks consistent with good practice. The board will then recommend to POALAP its nominated candidate for appointment. POALAP will then decide whether to make the appointment, noting that POALAP may interview the nominated candidate if necessary.

Should POALAP decide not to appoint the nominated candidate, the board will decide whether to nominate another candidate drawn from the shortlist, prepare another shortlist, or recommence the selection process.

#### **X.4.5 Deputy chair alternate**

Should the vacancy be the role of the chair of the board, then the deputy chair of the board shall act in the role of the chair under this policy.

### **X.5 Consent and Conflicts of Interest**

Prior to being interviewed for a position on the board, candidates will be required to complete a consent form and declare any relevant interests, so that the potential for a conflict of interest can be assessed. In considering any appointment or reappointment to the board, POALAP will take into consideration a candidate's existing directorships, and any other potential conflicts of interest. Where a potential conflict of interest has been identified, POALAP needs to be confident that:

- the candidate will be able to make an effective contribution, even if their interest means that they cannot participate in an activity of POAL that relates to a

particular matter; and/or

- measures can be put in place to manage the conflict

## **X.6 Removal of Board Members**

Board members may at any time be removed from office by ordinary resolution or written notice as set out in POAL's constitution.

## **X.7 Remuneration**

### **X.7.1 Remuneration benchmarking**

Within four months of an election, or such other period as the council and the board agree, the board will advise the Appointments, Performance Review and Value for Money Committee of Auckland Council as to the total remuneration the board recommends be payable to all board members for the period that is the subject of the recommendation. The advice will be based on a remuneration benchmarking exercise undertaken by the board in conjunction with an external consultancy.

### **X.7.2 Approval of remuneration**

The total remuneration of board members for that period will then be determined by the Appointments, Performance Review and Value for Money Committee under delegation from the Governing Body of Auckland Council. That amount shall be the amount of the monetary sum payable to all the board members to be approved for that period, by council as shareholder in accordance with the constitution of POAL. The board acting under the constitution of POAL will then determine the amount of remuneration payable to each board member.

## **X.8 Appointment of Chair and Deputy Chair**

Under the constitution of POAL, the board elects the chairperson and deputy chairperson of the board. The chair (or in the case of election of the chair, the deputy chair) of the board will confer with POALAP as to the person the board is minded to elect to such position.

## **X.9 Board Corporate Governance Statement and Charter**

Each board member shall be subject to the Corporate Governance Statement and Charter of the board, as approved by the board from time to time.

## **X.10 Board Review**

Each year the chair of the board shall provide POALAP with a report by the board summarising the annual review of its performance. It is noted that every second year this review is conducted for the board by an external provider with experience in undertaking such reviews.

## Annex B – Monitoring, Liaison, Reporting and Disclosure of Information – Communication Schedule

### Part One – Specific matters

Aspect	Mandate	Relevant Dates	Points of Contact
<b>1. Statement of Corporate Intent (SCI)</b> - Prepared annually for FY plus two following FYs - Confidential until made public	Port Companies Act 1988	- Draft issued by POAL by 30 June - Council comments provided by 31 July - Final issued by POAL by 31 August	- SCI issued to CCO Governance team <sup>1</sup> - SCI reviewed by Finance and Performance Committee
<b>2. Annual Shareholder Meeting</b> - Covers financial performance of POAL, governance, strategic and topical issues - Formal shareholder resolutions - Confidential	SCI	- Aligned with CCO annual shareholder meeting process	- CCO Governance team and POAL Management to confer on arrangements - Presentation by POAL officers to Finance and Performance Committee
<b>4. Annual Report</b> - Performance commentary - Income statement - Balance sheet - Cash flow statement - Statement of changes in equity - Notes to the financial statements - Performance against the SCI KPTs - Salary band table - Auditor's report - Mix of public and confidential	Port Companies Act 1988	- Within 3 months of the end of the financial year (by 30 September)	- Distributed by POAL Management to Financial Planning and Financial Control
<b>3. Half Yearly Reports</b> - Performance commentary - Income statement - Balance sheet - Cash flow statement - Statement of changes in equity - Notes to the financial statements - Performance against SCI KPTs - Mix of public and confidential	Port Companies Act 1988	- Within 7 weeks of the end of the first half of year (by 18 February)	- Distributed by POAL Management team to Financial Planning and Financial Control
<b>5. Quarterly Reports</b> <i>New format to be agreed</i> - Financial update showing progress against budget - Progress towards SCI KPTs - Commentary on progress on key issues affecting	SCI	- Within 5 weeks of the end of the quarter	- Distributed by POAL Management to Financial Planning

<sup>1</sup> Auckland Council Council-controlled Organisation Governance and External Partnerships team

Aspect	Mandate	Relevant Dates	Points of Contact
<ul style="list-style-type: none"> <li>or likely to affect business</li> <li>- Significant events during the quarter</li> <li>- Confidential</li> </ul>			
<b>6. POAL letter of representation and going concern email</b>	Council requirement	- As per half year and full year end timetable	- Letter signed by POAL CEO and CFO - Emailed by POAL Management to Financial Planning
<b>7. Financial Reporting Pack</b> - As per current and future agreed formats - Confidential	Council requirement	- 2 weeks after end of each quarter	- Provided by POAL Management to Financial Control
<b>8. Long-term Plan (10 years) / Annual Budget</b> (i) Early awareness of any material financial matters that may impact the future budgets. In a LTP year, a draft 10 year and 30 year budget may be required (ii) 10-year financial plan (will include 30 years in LTP year) higher level than the quarterly financial pack. Will include year-end forecast position (iii) More detailed budget for upcoming year and will be phased - Confidential (public disclosures will be aggregated to maintain commercial sensitivity unless publicly available elsewhere)	Council requirement	- October/November: Early awareness (i) - February: 10 year financial plan (ii) - June: Detailed budget (iii)	- Provided by POAL Management to Financial Planning
<b>9. Inter-entity transactions (within council group)</b> - Confidential	Council requirement	- Quarterly	- Detail of transactions provided by POAL to Financial Control
<b>10. Register of accounting policies</b> - Not confidential	Council requirement	- Twice a year	- Register provided by POAL Management to Financial Control
<b>11. Any material acquisitions, disposals or other changes by POAL which affect council's accounting or financial reporting treatment or obligations in relation to POAL</b> - Confidential	Council requirement	- When POAL decision making is being progressed	- POAL Finance will confer with Financial Planning on any impact on council's accounting and reporting requirements
<b>12. Annual tax return</b>	IRD requirement	- Around October	- Tax return data provided by POAL's Finance team to Financial Control
<b>13. Annual tax subvention payment</b> - Council, Watercare and POAL agree the amount of tax subvention payment for budgeting purposes	Council group requirement	- February (to align with Annual Budget process)	- Respective council, POAL and Watercare staff
<b>14. Other shareholder approvals</b>	- Companies Act 1993 - Port Companies Act 1988 - POAL constitution - any other relevant legislation	- As required	- POAL Management to liaise with CCO Governance

Aspect	Mandate	Relevant Dates	Points of Contact
<b>15. Council's 'continuous disclosure' and other obligations in relation to its issued securities</b>	- Council's legal, contractual and NZX obligations for its issued securities	- As required	- Financial Control to advise POAL Management of materiality thresholds, information and certification requirements and time frames - POAL Management team to notify Financial Control accordingly
<b>16. One-off public and 'no-surprises' issues, including media releases</b> Each party to endeavour to: - inform one another prior to any significant decisions being made public or the occurrence of any event that could reasonably be anticipated to have a high level of public interest - provide each other with copy of any media releases relating to or which may have a bearing on POAL prior to publication - Confidential	MOU	- As required	- Information provided by POAL Communications Team to Mayoral Office and Communications Team and vice versa
<b>17. Any material changes by POAL in relation to any acquisition of shares or investment in joint venture, significant asset or investment disposal, or any proposed capital expenditure not previously advised</b> - Confidential	SCI/MOU	- Conferral as per SCI/MOU requirements	- Financial Control, with conferral to Financial Planning on any impact on council's accounting and reporting requirements.
<b>18. Any material decisions by Auckland Council in relation to:</b> - significant infrastructure or other developments which may have a material impact on POAL's current or future operations or capital requirements - any change to any policies or processes of Council which relate to matters referred to in MOU	MOU	- Prior to decisions being made	- CCO Governance to confer with POAL Management

## Part Two – Other information requests made by Auckland Council to POAL

- Any request by council for information must be made to POAL Management by the CCO Governance team. CCO Governance will review any request originating within council and consider its appropriateness before deciding whether to send it to POAL Management. A request must be in writing, must include from whom in council the request has come from (name and title), the reason for the request and its urgency (including any deadlines) and be sent to a specified POAL email inbox. Urgent requests should also be brought to POAL's attention with a telephone call.
- Information requests made by council but not from the CCO Governance team will not be answered but will be referred to the CCO Governance team.
- Information requests received by POAL will be reviewed for adherence to the memorandum of understanding principles before a response is made. If the information request is denied then a reason will be provided (e.g. if such information requested is commercially sensitive).
- POAL will make reasonable efforts to provide a timely response, based on the urgency of the request.
- POAL will note whether the information is confidential or not, and any terms that are attached to its release.
- Any confidential information held by the CCO Governance team will be managed by that team with respect to further distribution within council. The CCO Governance team will escalate any matter to the chief executive, if required.

# Proposed Relationship Principles between Auckland Council and Auckland International Airport Limited

## 1. Purpose

This relationship principles document sets out the nature of the relationship between Auckland Council and Auckland International Airport Limited.

## 2. Context

The following context underpins council's role as a shareholder in respect of AIAL:

- 2.1 AIAL is a publicly listed company, subject to NZX continuous disclosure requirements.
- 2.2 Council currently has a 22.3% shareholding in AIAL.

## 3. Objectives

The objectives of council in its relationship with AIAL are to:

- 3.1 ensure an optimal commercial return from council's investment in AIAL.
- 3.2 observe appropriate shareholder governance practice proportionate to council's minority shareholding in AIAL.

## 4. Monitoring, Liaison and the Disclosure of Information

Communication between council and AIAL is set out as follows:

Aspect	Nature of Information	Point of Contact
<b>4.1 Financial Reporting Requirements</b>	<ul style="list-style-type: none"> <li>• Financial results information provided to council around 20 February / 20 August annually</li> <li>• Discussions between council and AIAL regarding timing and delivering of financial information to coordinate with council reporting</li> <li>• Information is confidential until reported to the NZX by no later than 28 February / 30 August annually for half year / preliminary announcement to NZX by AIAL</li> </ul>	<ul style="list-style-type: none"> <li>• AIAL and council Financial Control teams</li> <li>• Expertise from council legal team, as required</li> <li>• Oversight by AIAL and council CFOs, if required</li> </ul>
<b>4.2 Dividend and Shareholder Actions</b>	<ul style="list-style-type: none"> <li>• Voting at AGMs</li> <li>• Voting on director appointments</li> <li>• Decisions on dividend reinvestment plan and rights matters</li> <li>• Receipt of interim and final dividend</li> <li>• Other corporate actions, as required</li> </ul>	<ul style="list-style-type: none"> <li>• Council treasury and AIAL Financial Control</li> <li>• Expertise from council legal and governance teams, as required</li> <li>• Oversight by AIAL and council CFOs, if required</li> </ul>
<b>4.3 Annual Engagement</b>	<ul style="list-style-type: none"> <li>• Annual meeting with council executive team on AIAL activity</li> <li>• Annual meeting with Mayor, Deputy Mayor and Committee of Whole Chairs on AIAL activity</li> </ul>	<ul style="list-style-type: none"> <li>• Council governance team to liaise with AIAL strategy team</li> <li>• Oversight from AIAL and council CEs, if required</li> </ul>
<b>4.4 No Surprises</b>	<ul style="list-style-type: none"> <li>• Council and AIAL to operate on 'no surprises' basis and inform one another on matters of interest</li> </ul>	<ul style="list-style-type: none"> <li>• Council Mayor's Office and CE of council, CE of AIAL</li> </ul>

## 5. Status of Relationship Principles Document

- 5.1 This relationship principles document is not legally binding.
- 5.2 This relationship principles document, and any action under it, is subject to all applicable laws.

## Appendix C: Analysis of Proposal to Disestablish Auckland Council Investments Limited

	<b>Proposal: Disestablishment of ACIL with shares in AIAL and POAL transferred to council parent</b>	<b>Status Quo: retain ACIL with shareholding in AIAL and POAL</b>
<b>(i) Enhance the ability to engage with POAL on planning and strategic matters</b>	<ul style="list-style-type: none"> <li>• Direct oversight of POAL's capex programme which may be advantageous going forward in light of increasing constraints on debt funded capex across the council group.</li> <li>• More effective flow of information between POAL and council.</li> <li>• Enable POAL and council to better engage in joint planning where it is mutually beneficial, extending to environmental and land use considerations. Better understanding of POAL's business through direct reporting to governing body or appropriate committee.</li> <li>• Easier implementation of any future port study outcomes or broader government port strategy developments over time.</li> <li>• Direct ownership of POAL by council would bring POAL more proximate to political decision making, which could result in a negative perception of POAL by customers and may result in less certainty for POAL customers in respect of POAL's long term planning and strategic direction.</li> </ul>	<ul style="list-style-type: none"> <li>• There is not a free flow of information between POAL and council through ACIL, and the potential benefits from closer collaboration between POAL and the wider council group may not be realised within this configuration.</li> <li>• The current configuration means that council does not have direct oversight of POAL's capex programme which has the potential to negatively impact the council group's capex which is already constrained.</li> <li>• The additional layer of governance through ACIL adds a potential conflict where the views of ACIL might differ from those of council on specific issues.</li> <li>• Observed disadvantage from a practical perspective is that the distance created between council and POAL through ACIL makes it more difficult to achieve alignment of planning and strategic matters.</li> <li>• It is noted that a good level of collaboration was achieved through the recent POAL 30 year masterplan process, reported through Planning Committee on 7 May 2018.</li> </ul>
<b>(ii) Ensure an optimal commercial return from the investments in AIAL and POAL</b>	<ul style="list-style-type: none"> <li>• The proximity of political decision making to POAL may negatively impact the customer perception of POAL. This could result in POAL's customers preferring alternative port operations for business purposes, which could result in a lower dividend from POAL being returned to council.</li> <li>• S 6(1)(b) of the Port Companies Act 1988 allows up to two members or employees of a regional council to be appointed to a port board, which could diminish the customer perception of POAL. The MoU between council and POAL states that council staff or employees will not be appointed to the POAL board and mitigates this aspect.</li> <li>• Ownership of POAL by council may cause prospective directors to be less attracted to the role of being a director on the POAL board, and may cause existing directors to reconsider their role on the board. This could negatively impact POAL's commercial return to council.</li> <li>• The MoU agreed between council and POAL will provide an effective framework for the governance relationship between council and POAL and will preserve POAL's capacity to operate successfully and provide an optimal commercial return to council.</li> <li>• The shares in AIAL would be held by council's treasury, which has expertise to manage the shareholding in such a way to achieve an optimal commercial return.</li> </ul>	<ul style="list-style-type: none"> <li>• The role of ACIL as a holding company allows distance between council and POAL which is conducive to POAL in fulfilling its legislative mandate to operate as a successful business under s 5 of the PCA 1988.</li> <li>• 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 port business and enables POAL to fulfil its legislative mandate to operate as a successful business.</li> <li>• It is considered that a commercial holding company such as ACIL mitigates the potential conflict between shorter term political decision making and a long term commercial focus that is desirable for port companies such as POAL.</li> <li>• Further to the above points, retention of the current structure would provide continuity and certainty to POAL and its customers. This means that the dividend returned to council by POAL would be unlikely to be adversely impacted due to any perceived uncertainty in POAL's operating environment.</li> </ul>
<b>(iii) Reduce council group costs</b>	<ul style="list-style-type: none"> <li>• Cost savings through disestablishment as ACIL's opex of approx. \$1.1 m would be retained.</li> <li>• Incremental savings achieved through the involvement of POAL in group processes such as group procurement and insurance.</li> </ul>	<ul style="list-style-type: none"> <li>• No cost saving in terms of ACIL's opex. Options to achieve savings within the current structure could be explored, however these are unlikely to be significant.</li> <li>• Current ownership structure does not preclude POAL from being involved in group processes. However, this is not currently being achieved.</li> </ul>