

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.

Signatories



Chair Ports of Auckland Limited

18 JUNE 2018
Date



CEO Ports of Auckland Limited

20 JUNE 2018
Date



CEO Auckland Council

28 JUNE 2018
Date

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
1. Statement of Corporate Intent (SCI) - 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 ¹ - SCI reviewed by Finance and Performance Committee
2. Annual Shareholder Meeting - 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
4. Annual Report - 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
3. Half Yearly Reports - 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
5. Quarterly Reports <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

¹ Auckland Council Council-controlled Organisation Governance and External Partnerships team

Aspect	Mandate	Relevant Dates	Points of Contact
<ul style="list-style-type: none"> or likely to affect business - Significant events during the quarter - Confidential 			
6. POAL letter of representation and going concern email	Council requirement	- As per half year and full year end timetable	<ul style="list-style-type: none"> - Letter signed by POAL CEO and CFO - Emailed by POAL Management to Financial Planning
7. Financial Reporting Pack - As per current and future agreed formats - Confidential	Council requirement	- 2 weeks after end of each quarter	<ul style="list-style-type: none"> - Provided by POAL Management to Financial Control
8. Long-term Plan (10 years) / Annual Budget (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	<ul style="list-style-type: none"> - October/November: Early awareness (i) - February: 10 year financial plan (ii) - June: Detailed budget (iii) 	<ul style="list-style-type: none"> - Provided by POAL Management to Financial Planning
9. Inter-entity transactions (within council group) - Confidential	Council requirement	- Quarterly	<ul style="list-style-type: none"> - Detail of transactions provided by POAL to Financial Control
10. Register of accounting policies - Not confidential	Council requirement	- Twice a year	<ul style="list-style-type: none"> - Register provided by POAL Management to Financial Control
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 - Confidential	Council requirement	- When POAL decision making is being progressed	<ul style="list-style-type: none"> - POAL Finance will confer with Financial Planning on any impact on council's accounting and reporting requirements
12. Annual tax return	IRD requirement	- Around October	<ul style="list-style-type: none"> - Tax return data provided by POAL's Finance team to Financial Control
13. Annual tax subvention payment - Council, Watercare and POAL agree the amount of tax subvention payment for budgeting purposes	Council group requirement	- February (to align with Annual Budget process)	<ul style="list-style-type: none"> - Respective council, POAL and Watercare staff
14. Other shareholder approvals	<ul style="list-style-type: none"> - Companies Act 1993 - Port Companies Act 1988 - POAL constitution - any other relevant legislation 	- As required	<ul style="list-style-type: none"> - POAL Management to liaise with CCO Governance

Aspect	Mandate	Relevant Dates	Points of Contact
15. Council's 'continuous disclosure' and other obligations in relation to its issued securities	- 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
16. One-off public and 'no-surprises' issues, including media releases 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
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 - 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.
18. Any material decisions by Auckland Council 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 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.