

STAFF REPORT

TO: Chairman and Members, Full Council

FROM: Murray Staite, Corporate Services Manager

DATE: 15 September 2009

SUBJECT: **Port of Golden Bay Limited – Shareholder Resolutions in Lieu of Annual General Meeting**

1 Purpose

To seek approval from the Council, as sole shareholder of Port of Golden Bay Limited, to not hold an Annual General Meeting (AGM) for Port of Golden Bay Limited

2 Background

Port of Golden Bay Limited (the Company) was incorporated on 10 April 2008. The Company was formed for name protection purposes.

Under Section 120 of the Companies Act 1993, the board of a company must call an annual general meeting of shareholders to be held no later than six months after the “balance date” of the company. This means that the meeting must be held by 30 December 2009. The first annual meeting must be held within 18 months of registration. However, it is unnecessary for the company to hold a meeting if everything required to be done at that meeting is completed by written resolution of the shareholders, passed in accordance with Section 122 of the Companies Act.

3 Comment

3.1 Port of Golden Bay Limited

The purpose of holding an AGM for Port of Golden Bay Limited would be for the Council to appoint Audit New Zealand on behalf of the Controller and Auditor-General as the company’s auditors, to pass a resolution regarding the auditors’ fees and expenses and to approve, as shareholder, the Annual Report of Port of Golden Bay Ltd. As the company has not traded, the annual report is for the 15 month period ended 30 June 2009 and consists of a nil set of financial statements. It is also a requirement that council owned companies are audited by Audit New Zealand.

3.2 Affixing the Council's Common Seal

In completing the resolution the fixing of the councils common seal is required. As the Council's Chief Executive Officer is also the sole Director for Port of Golden Bay Ltd; it would be a conflict of interest for him to also affix the Council's Common Seal.

It is for this reason that the resolution calls for the Corporate Services Manager to affix the Council's Common Seal.

4 Significance of the decision

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

5 Options

Option 1

Decline to pass the recommendation as detailed. This action would lead to the Company being unable to meet the Companies Office requirements and ultimately be removed from the Companies Register.

Option 2

Approve the recommendation. The annual return can then be filed with the Companies Office, maintaining its status in the Companies Register.

6 Recommendations

That the Council as sole shareholder Port of Golden Bay Limited:

1. Receives the June 2009 Annual report
2. Notes the content.
3. Resolves by way of the written resolutions contained within Attachment 1:
 - a. To appoint Audit New Zealand (as required by section 70 of the Local Government Act 2002) as the auditor of the Company to:
 - i. hold office from the date of this resolution until the conclusion of the Company's next annual meeting; and
 - ii. audit the Company's financial statements for the accounting period after the date of this resolution.
 - b. That the auditor's fees and expenses are to be determined by the directors of the company (or their appointed officers) in consultation with the auditor.
 - c. Not to hold an Annual General Meeting.

4. Authorises the Corporate Services Manager to affix the Council's Common Seal to the resolutions of the sole shareholder (Attachment 1).

Murray Staite
Corporate Services Manager

PORT OF GOLDEN BAY LIMITED
(the Company)

Written resolution of the sole shareholder of the Company dated 20 August 2009

Introduction

Under the Companies Act 1993 (the Act) the Board of the Company must call an annual meeting of shareholders to be held within a time specified by the Act. However, it is not necessary for the Company to hold a meeting of shareholders if everything required to be done at that meeting is done by written resolution passed under section 122 of the Act.

Resolutions

The sole shareholder resolved in the form of written resolutions under section 122(1) of the Act:

- 1 That the nil financial statements of the Company for the accounting period ended 30 June 2009 and the Annual Report be approved and adopted.
- 2 To appoint Audit New Zealand (as required by section 594ZC of the Local Government Act 1974) as the auditor of the Company to:
 - a. hold office from the date of this resolution until the conclusion of the Company's next annual meeting; and
 - b. audit the Company's financial statements for the accounting period after the date of this resolution.
- 3 That the auditor's fees and expenses are to be determined by the directors' of the company (or their appointed officers) in consultation with the auditor.

Signed by the sole shareholder

THE COMMON SEAL of
TASMAN DISTRICT COUNCIL
affixed in the presence of

Corporate Services Manager