

STAFF REPORT

TO: Chair and Members, Corporate Services Committee

FROM: Financial Accountant

DATE: 31 August 2010

SUBJECT: **Port of Golden Bay Limited – Shareholder Resolutions in Lieu of Annual General Meeting Report – RFN10-09-06**

PURPOSE

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

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 (AGM) 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 2010. 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.

DISCUSSION

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 for the year ended 30 June 2010 consists of a nil set of financial statements.

At the Corporate Services Committee meeting held on 24 June 2010 it was resolved to exempt Port of Golden Bay Limited from the requirements of a Council controlled organisation:

**Moved Crs Glover/Borlase
FN10-06-25**

THAT for the 2009/2010 financial year, the Corporate Services Committee, Tasman District Council resolves to exempt Port Golden Bay Ltd from the requirements of a council controlled organisation, as permitted under section 7 of the Local Government Act 2002 and that this exemption be reviewed on an annual basis.

CARRIED

Exempting Port Golden Bay Ltd means that there is no requirement:

- to produce an annual statement of corporate intent, incorporating measures by which the Council can assess the achievement of its objectives
- to submit to the Council a half yearly report on its operations
- to submit to the Council, and make available to the public, an annual report on its operations
- to submit its annual report for audit by an auditor appointed by the Auditor-General.

There is still a requirement under the Companies Act 1993 to produce an Annual Report.

Affixing the Council's Common Seal

In completing the resolution the fixing of the Council's 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.

SIGNIFICANCE

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.

OPTIONS

Option 1

Decline to pass the recommendation as detailed. This action would require the Company to hold an AGM. If it failed to do so, this 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.

RECOMMENDATION

THAT the Corporate Services Committee as sole shareholder of Port of Golden Bay Limited:

- 1 Receives the June 2010 Annual Report and notes its content.**
- 2 Resolves by way of the written resolutions contained within Attachment One:**
 - a) Not to hold an Annual General Meeting.**
- 3 Authorises the Corporate Services Manager, Tasman District Council to affix the Council's Common Seal to the resolutions of the sole shareholder (Attachment One).**

Bryce Grammer
Financial Accountant

Attachment One

PORT OF GOLDEN BAY LIMITED
(the Company)

Written resolution of the sole shareholder of the Company dated 31 August 2010

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 2010 and the Annual Report be approved and adopted.

Signed by the sole shareholder

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

Corporate Services Manager