

# **Joint Shareholders Committee**

## **Komiti Joint Shareholders**

# **AGENDA**

**Date: Monday 22 May 2023**

**Time: 9.00 am**

**Venue: Tasman Council Chamber  
189 Queen Street, Richmond**

### **MEMBERSHIP**

#### **Council**

#### **Members**

#### **Tasman District Council**

Mayor T King

Deputy Mayor S Bryant

Cr B Dowler

Cr C Hill

Cr C Mackenzie

Cr K Maling

#### **Nelson City Council**

Mayor N Smith (Chair)

Deputy Mayor R O'Neill-Stevens

Cr M Benge

Cr M Courtney

Cr K Paki Paki

Cr R Sanson

(Quorum 6 members)

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## AGENDA

**1 OPENING, WELCOME, KARAKIA**

**2 APOLOGIES AND LEAVE OF ABSENCE**

Leave of absence for this meeting was previously granted to Deputy Mayor S Bryant.

**Recommendation**

**That apologies be accepted.**

**3 PUBLIC FORUM**

Registration is required to speak at public forum. You can register [here](#)

**4 DECLARATIONS OF INTEREST**

**5 LATE ITEMS**

**6 CONFIRMATION OF [MINUTES](#)**

**That the minutes of the Joint Shareholders Committee meeting held on Thursday, 27 April 2023, be confirmed as a true and correct record of the meeting.**

**That the confidential minutes of the Joint Shareholders Committee meeting held on Thursday, 27 April 2023, be confirmed as a true and correct record of the meeting.**

**7 PRESENTATIONS**

Nil

**8 REPORTS**

8.1 Infrastructure Holdings Limited - transfer of shares in Port Nelson Limited and Nelson Airport Limited..... 4

**9 CONFIDENTIAL SESSION**

Nil

**6 CLOSING KARAKIA**

## 8 REPORTS

### 8.1 INFRASTRUCTURE HOLDINGS LIMITED - TRANSFER OF SHARES IN PORT NELSON LIMITED AND NELSON AIRPORT LIMITED

Decision Required

<b>Report To:</b>	Joint Shareholders Committee
<b>Meeting Date:</b>	22 May 2023
<b>Report Author:</b>	Marie Callander, Senior Legal Advisor
<b>Report Number:</b>	RJSC23-04-5

<b>1 Summary</b>
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- 1.1 On 7 June 2022, the Joint Shareholders Committee resolved to recommend to Nelson City Council and Tasman District Council that:
  - 1.1.1 Infrastructure Holdings Limited (IHL) be incorporated and all shares in each of Port Nelson Limited (PNL) and Nelson Airport Limited (NAL) be transferred to IHL, and,
  - 1.1.2 they enter into a form of Shareholders Agreement and Agreement for Sale and Purchase of Shares which included share values for each of PNL and NAL that reflected book values at that time.
- 1.2 IHL was incorporated on 17 January 2023 and for practical financial and accounting reasons will take ownership of the shares in each of PNL and NAL on 1 July 2023.
- 1.3 Deloitte has advised that the value of shares in each of PNL and NAL need to be recorded at market value (being the value of net assets as at 31 March 2023).
- 1.4 This report requests the Committee to approve:
  - 1.4.1 the necessary amendments to update the form (previously approved by each of Nelson City Council and Tasman District Council) of each of:
    - 1.4.1.1 the Shareholders Agreement for Infrastructure Holdings Limited to be in the form attached (**Attachment 1**) (Shareholders Agreement), and
    - 1.4.1.2 Agreement for Sale and Purchase of Shares in Port Nelson Limited and Nelson Airport Limited under which the shares of PNL and NAL are to be transferred to IHL to be in the form attached (**Attachment 2**) (Agreement for Sale and Purchase of Shares), and
  - 1.4.2 an updated resolution for the purposes of section 50 of the Companies Act 1993 (Act) to reflect the market value of PNL and NAL shares which are scheduled to be transferred to IHL on 1 July 2023.

**2 Draft Resolution**

That the Joint Shareholders Committee:

1. receives the Infrastructure Holdings Limited - transfer of shares in Port Nelson Limited and Nelson Airport Limited report; and
2. notes that:
  - a. when the Joint Shareholders Committee previously approved and recommended to each of Nelson City Council (NCC) and Tasman District Council (TDC) (in RJSC22-6-1) the form of a Shareholders' Agreement for Infrastructure Holdings Limited (IHL) and an Agreement for Sale and Purchase of Shares in Port Nelson Limited (PNL) and Nelson Airport Limited (NAL), the values for the shares in each of PNL and NAL were recorded at book value (being, at that time, \$8,446,000 in total); and
  - b. upon the incorporation of IHL on 17 January 2023, NCC and TDC each subscribed for (and IHL issued) 42,230 ordinary shares in IHL (being 84,460 ordinary shares in total) (Initial Shares), at an issue price of \$100.00 per share (Initial Share Issue). The total subscription amount for the Initial Shares was therefore \$8,446,000 (Initial Subscription Amount). This was equal to the aggregate book value of PNL and NAL, as determined at the time that RJSC22-6-1 was approved. The consideration for the Initial Shares (being the Initial Subscription Amount) remains unpaid and will be paid to IHL in accordance with the Shareholders' Agreement (that is to be approved in these resolutions); and
  - c. Deloitte has now advised that the share values in each of PNL and NAL needs to be recorded at market value (being the value of net assets as at 31 March 2023) for the purposes of the transfer of those shares from NCC and TDC to IHL on 1 July 2023. Deloitte has valued the net assets of:
    - i. NAL at \$103,700,000; and
    - ii. PNL at \$275,700,000,resulting in a total net asset value of \$379,400,000 for PNL and NAL combined (New Valuation); and
  - d. in order for IHL to be capitalised in an amount equal to the purchase price for the shares in PNL and NAL (being \$379,400,000), it will be necessary for NCC and TDC to each subscribe for a further 1,854,770 ordinary shares in IHL (being a further 3,709,540 ordinary shares in total) (Second Shares) at an issue price of \$100.00 per share (Second Share Issue). The total consideration for the Second Share Issue will be \$370,954,000 and will also be paid in accordance with the Shareholders' Agreement; and
  - e. the Shareholders' Agreement for IHL in the form attached (Attachment 1) (Shareholders' Agreement) and the Agreement for Sale and Purchase of Shares in PNL and NAL in the form attached (Attachment 2) (Agreement for Sale and Purchase of Shares) have been updated from the form provided at RJSC22-6-1 to reflect the New Valuation and the Second Share Issue; and
  - f. Entitled persons' approvals will be required under the Companies Act 1993 (Act) prior to IHL's entry into the Shareholders' Agreement and Agreement for Sale

and Purchase of Shares, on the basis that (among other reasons already notified to this committee) the Second Share Issue will be undertaken in accordance with:

- i.* section 107(2) of the Act, so that the Second Shares may be issued otherwise than in accordance with sections 42, 44 or 45 of the Act; and
- ii.* clause 3.4 of IHL’s constitution; and

**g.** The resolution at JSC22-06-5 noted at items G., H., I., and S. that:

**G.** *As part of the proposal to incorporate IHL, it is proposed that each of the Shareholders transfer all their shares in PNL and NAL to IHL (Share Sale) for \$8,446,000 in total (Purchase Price). The Purchase Price will be owed to the Shareholders in equal portions (being \$4,223,000 each). The Crown holds, and will continue to hold, one special “Kiwi Share” in NAL.*

**H.** *The Purchase Price allocation is:*

- a) \$2,400,000 for the shares in NAL; and*
- b) \$6,046,000 for the shares in PNL.*

**I.** *Nelson City Council and Tasman District Council will each subscribe for 42,230 ordinary shares in IHL (being 84,460 ordinary shares in total) (Initial Shares), at an issue price of \$100.00 per share (Initial Share Issue). The total subscription amount for the Initial Shares is therefore \$8,446,000 (Initial Subscription Amount), which is equal to the Purchase Price.*

**S.** *The Restructuring Proposals and the Financing Proposals will require the approval of the Shareholders as:*

- a) the proposals are, or may be, “major transactions” (as defined in section 129 of the Companies Act 1993 (Act));*
- b) the Initial Share Issue and the New Share Issue require the agreement of IHL’s entitled persons (as that term is defined in the Act) for the purposes of section 107(2) of the Act. The only entitled persons of IHL will be the Shareholders; and*
- c) Nelson City Council and Tasman District Council (as the shareholders of IHL) must consent, for the purposes of section 50 of the Act and for all other purposes, to becoming the holder of the Initial Shares and the New Shares.*

**3.** amends G., H., I., and S. of resolution JSC22-06-5, to reflect the New Valuation, the Second Share Issue, and the updated form of Unanimous Shareholder Resolutions and Entitled Persons’ Agreement, as follows:

**G.** *As part of the proposal to incorporate IHL, it is proposed that each of the Shareholders transfer all their shares in PNL and NAL to IHL (Share Sale) for \$379,400,000 in total (Purchase Price). The Purchase Price will be owed to the Shareholders in equal portions (being \$189,700,000 each). The Crown holds, and will continue to hold, one special “Kiwi Share” in NAL.*

**H.** *The Purchase Price allocation is:*

- a) \$103,700,000 for the shares in NAL; and*
- b) \$275,700,000 for the shares in PNL.*

**I.** *Upon incorporation of IHL, Nelson City Council and Tasman District Council each subscribed for (and IHL issued) 42,230 ordinary shares in IHL*

(being 84,460 ordinary shares in total) (Initial Shares), at an issue price of \$100.00 per share (Initial Share Issue). The total subscription amount for the Initial Shares is therefore \$8,446,000 (Initial Subscription Amount), which will be paid for in accordance with IHL’s Shareholders’ Agreement. Since IHL’s incorporation on 17 January 2023, Deloitte has valued the shares in PNL and NAL at a total combined value of \$379,400,000. Accordingly, in order to capitalise IHL in an amount equal to the Purchase Price, Nelson City Council and Tasman District Council will each subscribe for a further 1,854,770 ordinary shares in IHL (being a further 3,709,540 ordinary shares in total) (Second Shares) at an issue price of \$100.00 per share (Second Share Issue). The consideration for the Second Share Issue will also be paid in accordance with the Shareholders’ Agreement.

- S. The Restructuring Proposals and the Financing Proposals will require the approval of the Shareholders as:
- a) the proposals are, or may be, “major transactions” (as defined in section 129 of the Companies Act 1993 (Act));
  - b) the Initial Share Issue requires the agreement of Nelson City Council and Tasman District Council as IHL’s shareholders and only entitled persons (as that term is defined in the Act) for all purposes (including to meet any requirement under the Act).
  - c) the Second Share Issue and the New Share Issue require the agreement of IHL’s entitled persons (as that term is defined in the Act) for the purposes of section 107(2) of the Act and for the purposes of clause 3.4 of IHL’s constitution.
  - d) Nelson City Council and Tasman District Council (as the shareholders of IHL) must consent, for the purposes of section 50 of the Act and for all other purposes, to becoming the holder of the Initial Shares, the Second Shares and the New Shares;

4. agrees to:

- a. enter into the updated Shareholders Agreement in the form attached (Attachment 1) (which will record the terms of the Initial Share Issue and the Second Share Issue) before the date that Nelson City Council and Tasman District Council each transfer their respective shareholdings in NAL and PNL to IHL;
- b. enter into the updated Agreement for Sale and Purchase of Shares in the form attached (Attachment 2); and
- c. approve the updated form of Unanimous Shareholder Resolutions and Entitled Persons’ Agreement (Attachment 3), and authorise the Chief Executive of each of TDC and NCC to sign it and make any amendments to it prior to signing.

**Recommendation to Nelson City Council and Tasman District Council**

The Council notes that:

***Purpose***

**A. to seek Council’s approval for:**

- a) the necessary amendments to update the form (previously approved by each of Nelson City Council (NCC) and Tasman District Council (TDC)) of each of:
  - i. the Infrastructure Holdings Limited (IHL) Shareholders’ Agreement to be in the form attached (Attachment 1) (Shareholders’ Agreement);
  - ii. the Agreement for Sale and Purchase of Shares in Port Nelson Limited (PNL) and Nelson Airport Limited (NAL) in the form attached (Attachment 2) (Agreement for Sale and Purchase of Shares) under which the shares of PNL and NAL are to be transferred from NCC and TDC to IHL; and
  - iii. Unanimous Shareholder Resolutions and Entitled Persons’ Agreement in relation to the “Restructuring Transactions” (as defined in the Council’s previous resolutions [*insert reference*]) (Attachment 3); and
- a) an updated resolution for the purposes of section 50 of the Companies Act 1993 (Act).

**Share values**

- B. when the Joint Shareholders Committee previously approved and recommended to each of NCC and TDC (in RJSC22-6-1) the form of a Shareholders’ Agreement for IHL and an Agreement for Sale and Purchase of Shares in PNL and NAL, the values for the shares in each of PNL and NAL were recorded at book value (being, at that time, \$8,446,000 in total); and
- C. upon the incorporation of IHL on 17 January 2023, NCC and TDC each subscribed for 42,230 ordinary shares in IHL (being 84,460 ordinary shares in total) (Initial Shares), at an issue price of \$100.00 per share (Initial Share Issue). The total subscription amount for the Initial Shares was therefore \$8,446,000 (Initial Subscription Amount). This was equal to the aggregate book value of PNL and NAL, as determined at the time that RJSC22-6-1 was approved. The consideration for the Initial Shares (being the Initial Subscription Amount) remains unpaid and will be paid to IHL in accordance with the Shareholders’ Agreement (that is to be approved in these resolutions); and
- D. Deloitte has now advised that the share values for each of PNL and NAL need to be recorded at market value (being the value of net assets as at 31 March 2023) for the purposes of the transfer of those shares from NCC and TDC to IHL on 1 July 2023. Deloitte has valued the net assets of:
  - i. NAL at \$103,700,000; and
  - ii. PNL at \$275,700,000,resulting in a total net asset value of \$379,400,000 for PNL and NAL combined (New Valuation); and
- E. in order for IHL to be capitalised in an amount equal to the purchase price for the shares in PNL and NAL (being \$379,400,000), it will be necessary for NCC and TDC to each subscribe for a further 1,854,770 ordinary shares in IHL (being a further 3,709,540 ordinary shares in total) (Second Shares) at an issue price of \$100.00 per share (Second Share Issue). The total consideration for the Second Share Issue will be \$370,954,000 and will also be paid in accordance with the Shareholders’ Agreement; and



- F. the Shareholders' Agreement and the Agreement for Sale and Purchase of Shares have been updated from the form provided at RJSC22-6-1 to reflect the New Valuation and the Second Share Issue; and
- G. Entitled persons' approvals will be required under the Act prior to IHL's entry into the Shareholders' Agreement and Agreement for Sale and Purchase of Shares, on the basis that (among other reasons already notified to this Council) the Second Share Issue will be undertaken in accordance with:
- i. section 107(2) of the Act so that the Second Shares may be issued otherwise than in accordance with sections 42, 44 or 45 of the Act; and
  - ii. clause 3.4 of IHL's constitution; and
- H. The resolution at JSC22-06-5 noted at items G., H., I., and S. that:
- G. *As part of the proposal to incorporate IHL, it is proposed that each of the Shareholders transfer all their shares in PNL and NAL to IHL (Share Sale) for \$8,446,000 in total (Purchase Price). The Purchase Price will be owed to the Shareholders in equal portions (being \$4,223,000 each). The Crown holds, and will continue to hold, one special "Kiwi Share" in NAL.*
  - H. *The Purchase Price allocation is:*
    - a) *\$2,400,000 for the shares in NAL; and*
    - b) *\$6,046,000 for the shares in PNL.*
  - I. *Nelson City Council and Tasman District Council will each subscribe for 42,230 ordinary shares in IHL (being 84,460 ordinary shares in total) (Initial Shares), at an issue price of \$100.00 per share (Initial Share Issue). The total subscription amount for the Initial Shares is therefore \$8,446,000 (Initial Subscription Amount), which is equal to the Purchase Price.*
  - S. *The Restructuring Proposals and the Financing Proposals will require the approval of the Shareholders as:*
    - a) *the proposals are, or may be, "major transactions" (as defined in section 129 of the Companies Act 1993 (Act));*
    - b) *the Initial Share Issue and the New Share Issue require the agreement of IHL's entitled persons (as that term is defined in the Act) for the purposes of section 107(2) of the Act. The only entitled persons of IHL will be the Shareholders; and*
    - c) *Nelson City Council and Tasman District Council (as the shareholders of IHL) must consent, for the purposes of section 50 of the Act and for all other purposes, to becoming the holder of the Initial Shares and the New Shares.*

The Council resolves that:

- 1 The Council amends G., H., I., and S. of resolution [**insert date of individual NCC/ TDC resolution**], to reflect the New Valuation, the Second Share Issue and the updated form of Unanimous Shareholder Resolutions and Entitled Persons' Agreement, as follows:
  - G. **As part of the proposal to incorporate IHL, it is proposed that each of the Shareholders transfer all their shares in PNL and NAL to IHL (Share Sale) for \$379,400,000 in total (Purchase Price). The Purchase Price will be owed**

to the Shareholders in equal portions (being \$189,700,000 each). The Crown holds, and will continue to hold, one special “Kiwi Share” in NAL.

- H. The Purchase Price allocation is:
- a) \$103,700,000 for the shares in NAL; and
  - b) \$275,700,000 for the shares in PNL.
- I. Upon incorporation of IHL, Nelson City Council and Tasman District Council each subscribed for (and IHL issued) 42,230 ordinary shares in IHL (being 84,460 ordinary shares in total) (Initial Shares), at an issue price of \$100.00 per share (Initial Share Issue). The total subscription amount for the Initial Shares is therefore \$8,446,000 (Initial Subscription Amount) which will be paid for in accordance with IHL’s Shareholders’ Agreement. Since IHL’s incorporation on 17 January 2023, Deloitte has valued the shares in PNL and NAL at a total combined value of \$379,400,000. Accordingly, in order to capitalise IHL in an amount equal to the Purchase Price, Nelson City Council and Tasman District Council will each subscribe for a further 1,854,770 ordinary shares in IHL (being a further 3,709,540 ordinary shares in total) (Second Shares) at an issue price of \$100.00 per share (Second Share Issue). The consideration for the Second Share Issue will also be paid in accordance with the Shareholders’ Agreement.
- S. The Restructuring Proposals and the Financing Proposals will require the approval of the Shareholders as:
- a) the proposals are, or may be, “major transactions” (as defined in section 129 of the Companies Act 1993 (Act));
  - b) the Initial Share Issue requires the agreement of Nelson City Council and Tasman District Council as IHL’s shareholders and only entitled persons (as that term is defined in the Act) for all purposes (including to meet any requirement under the Act).
  - c) the Second Share Issue and the New Share Issue require the agreement of IHL’s entitled persons (as that term is defined in the Act) for the purposes of section 107(2) of the Act, and for the purposes of clause 3.4 of IHL’s constitution.
  - d) Nelson City Council and Tasman District Council (as the shareholders of IHL) must consent, for the purposes of section 50 of the Act and for all other purposes, to becoming the holder of the Initial Shares, Second Shares and the New Shares.
- 2 the Council consents, for the purposes of section 50 of the Act and for all other purposes, to being the joint owner in equal shares of the Initial Shares, Second Shares and the New Shares;
- 3 the Shareholders’ Agreement, Agreement for Sale and Purchase of Shares, and Unanimous Shareholder Resolutions and Entitled Persons’ Agreement are approved and will apply in place of the form of these documents previously approved by Council.

**1 Purpose of the Report**

- 1.1 To obtain approval for:
- 1.1.1 the Shareholders Agreement for Infrastructure Holdings Limited to be in the form attached (**Attachment 1**) (Shareholders Agreement), and
  - 1.1.2 Agreement for Sale and Purchase of Shares in Port Nelson Limited and Nelson Airport Limited under which the shares of PNL and NAL are to be transferred to IHL to be in the form attached (**Attachment 2**) (Agreement for Sale and Purchase of Shares), and
  - 1.1.3 an updated resolution for the purposes of section 50 of the Companies Act 1993 (Act).  
to reflect the market value of PNL and NAL shares which are scheduled to be transferred to IHL on 1 July 2023.

**2 Background and Discussion**

- 2.1 On 7 June 2022 the Joint Shareholders Committee resolved to recommend to Nelson City Council and Tasman District Council that:
- 2.1.1 IHL be incorporated and all shares in each of PNL and NAL be transferred to IHL, and.
  - 2.1.2 they enter into a form of Shareholders Agreement and Agreement for Sale and Purchase of Shares which included share values for each of PNL and NAL that reflected market values at that time.
- 2.2 Tasman District Council (on 30 June 2022) and Nelson City Council (on 22 September 2022) approved the form of Shareholders Agreement and Agreement for Sale and Purchase of Shares recommended by the Joint Shareholders Committee
- 2.3 IHL was incorporated on 17 January 2023 and for practical financial and accounting reasons will take ownership of the shares in each of PNL and NAL on 1 July 2023.
- 2.4 Deloitte has valued PNL and NAL and provided the range for the equity values based on current market conditions as set out in the table below:

	Low	Mid	High
NAL	\$95,000,000	\$100,600,000	\$105,200,000
PNL	\$253,100,000	\$278,700,000	\$304,300,000

- 2.5 The Net Assets of PNL and NAL set out in the table below are in each case around the mid-range of Deloitte’s valuation.

	NAL	PNL	Total
Net Assets - 31 March 2023	\$103,700,000	\$275,700,000	\$370,400,000
Share Transfer Value	\$103,700,000	\$275,700,000	\$370,400,000

- 2.6 Staff recommend that the share transactions are based on the Net Asset values as they clearly fall within the valuation range.
- 2.7 Councilors should note that these are non-cash transactions.

**3 Options**

3.1 The options are outlined in the following table.

	Option	Advantage	Disadvantage
1.	Approve the updated IHL Shareholders Agreement and Agreement for Sale and Purchase of Shares in PNL and NAL and consent in accordance with section 50 of the Act	Allows these transactions to transfer the shares in PNL and NAL be completed in accordance with tax rules	None
2.	Do not approve the updated IHL Shareholders Agreement and Agreement for Sale and Purchase of Shares in PNL and NAL and consent in accordance with section 50 of the Act	None	These transactions to transfer the shares in PNL and NAL would not be able to be completed

3.2 Option 1 is recommended.

**4 Strategy and Risks**

**4.1 Climate Impact**

4.2 These decisions have no climate impact.

4.3 This decision is to give effect to the Councils' strategic decision to form IHL as a holding company to take advantage of lower cost Local Government Funding Agency Limited funding.

**5 Policy / Legal Requirements / Plan**

5.1 The JSC has the following delegations to consider matters relating to jointly owned Council Controlled Organisations. It also has the power to decide or to make a recommendation to the Councils on this matter.

*Areas of Responsibility:*

*All matters relating to jointly owned Council Controlled Organisations and Council Controlled Trading Organisations, including statements of intent,*

*statements of corporate intent, half yearly reports, the appointment of directors and setting of directors' fees.*

*Powers to Decide:*

*All matters relating to jointly owned Council Controlled Organisations and Council Controlled Trading Organisations, including statements of intent, statements of corporate intent, half yearly reports, the appointment of directors and setting of directors' fees.*

- 5.2 Although PNL is not a CCO or CCTO under the Local Government Act 2002, however the Councils have for practical decision-making purposes throughout the operation of the Joint Shareholders Committee included PNL within the delegated authority of the Joint Shareholders Committee.

## **6 Consideration of Financial or Budgetary Implications**

- 6.1 There are no financial or budgetary implications of updating the form of IHL Shareholders Agreement and Agreement for Sale and Purchase of Shares.

## **7 Significance and Engagement**

- 7.1 This matter is of low significance because it is updating previously approved documentation.

	<b>Issue</b>	<b>Level of Significance</b>	<b>Explanation of Assessment</b>
1.	Is there a high level of public interest, or is decision likely to be controversial?	Low	This matter is of low significance because it is updating previously approved documentation
2.	Are there impacts on the social, economic, environmental or cultural aspects of well-being of the community in the present or future?	No	
3.	Is there a significant impact arising from duration of the effects from the decision?	No	
4.	Does this activity contribute or detract from one of the goals in the <a href="#">Tasman Climate Action Plan 2019</a> ?	No	
5.	Does the decision relate to a strategic asset? (refer Significance and Engagement Policy for list of strategic assets)	Yes, NAL and PNL	
6.	Does the decision create a substantial change in the level of service provided by Council?	No	

	<b>Issue</b>	<b>Level of Significance</b>	<b>Explanation of Assessment</b>
7.	Does the proposal, activity or decision substantially affect debt, rates or Council finances in any one year or more of the LTP?	No	
8.	Does the decision involve the sale of a substantial proportion or controlling interest in a CCO or CCTO?	Yes, NAL and PNL to IHL which is jointly owned by Nelson City Council and Tasman District Council	
9.	Does the proposal or decision involve entry into a private sector partnership or contract to carry out the deliver on any Council group of activities?	No	
10	Does the proposal or decision involve Council exiting from or entering into a group of activities?	No	
11	Does the proposal require inclusion of Māori in the decision making process (consistent with s81 of the LGA)?	No	

**8 Conclusion**

- 8.1 Approval of the updated Shareholders Agreement and Agreement for Sale and Purchase of Shares and giving consent in accordance with section 50 of the Act is necessary for the shares in NAL and PNL to be transferred to IHL.
- 8.2 Once approved by the JSC, recommendations will go to each council to approve the Shareholders Agreement and Agreement for Sale and Purchase of Shares. Both councils must approve these documents and give consent in accordance with section 50 of the Act for the shares in NAL and PNL to be transferred to IHL.

**9 Next Steps / Timeline**

- 9.1 Staff will prepare a referral report to each of Nelson City Council and Tasman District Council.
- 9.2 Once the recommendations are approved by both councils, staff will arrange for the Shareholders Agreement and the Agreement for Sale and Purchase of Shares to be prepared in final form and signed in conjunction with the other documents previously approved by the councils in relating to the transfer of the shares in NAL and PNL to IHL.

<b>3 Attachments</b>
----------------------

- |    |   |    |
|----|---|----|
| 1. | Draft Shareholders Agreement for Infrastructure Holdings Limited                                  | 16 |
| 2. | Draft Agreement for Sale and Purchase of Shares in Port Nelson Limited and Nelson Airport Limited | 31 |
| 3. | Unanimous Shareholder Resolutions and Entitled Persons' Agreement                                 | 40 |

**Shareholders' Agreement for  
Infrastructure Holdings Limited**

between  
Tasman District Council  
and  
Nelson City Council  
and  
Infrastructure Holdings Limited



## Shareholders' Agreement for Infrastructure Holdings Limited

Date:

2023

### Parties

Tasman District Council (TDC)

Nelson City Council (NCC)

Infrastructure Holdings Limited (the Company)

### 1. Interpretation and definitions

#### Definitions

1.1 In this agreement, unless the context otherwise requires:

<b>Accession Deed</b>	means an accession deed entered into by any Additional Shareholder in a form satisfactory to all of the Parties pursuant to which the Additional Shareholder agrees to observe, perform and be bound by this agreement;
<b>Act</b>	means the Companies Act 1993;
<b>Additional Shareholder</b>	means any person who becomes a Shareholder after the date of this agreement, as permitted by this agreement and the Constitution;
<b>Agreement for Sale and Purchase</b>	means the agreement for sale and purchase of all the ordinary shares in Nelson Airport Limited and Port Nelson Limited between TDC and NCC (as vendors) and the Company (as purchaser) dated on or about the date of this agreement;
<b>Board</b>	means the Directors acting together as the board of directors of the Company;
<b>Business</b>	means holding and administering investments in entities in which the Shareholders have a substantial interest for the benefit of the Nelson and Tasman regions and securing funding for and providing funding to the same;
<b>Constitution</b>	means the constitution of the Company as adopted or amended from time to time;

**Council-Controlled Trading**

**Organisation** has the meaning given to it in the Constitution;

**Director** means a person appointed as director of the Company in accordance with the terms of the Constitution, this agreement and the Act;

**Effective Date** means the date of this agreement;

**Equity** means shares in the case of a company, and partnership interest (as defined in the Limited Partnerships Act 2008) in the case of a limited partnership;

**Financial Year** means:

- (a) the period from the Effective Date to 30 June immediately following the Effective Date;
- (b) each subsequent period commencing on 1 July and ending on the next 30 June during the Term; and
- (c) the period from 1 July immediately preceding the end of the Term, to the end of the Term,

however, if there is a change of balance date, all references in this definition to 30 June will be deemed to be varied to the new balance date and all references to 1 July will be deemed to be varied to the day after that new balance date.

**Governance and Appointments**

**Committee** means the Governance and Appointments Committee described in clause 13;

**Independent** has the meaning given in the Constitution;

**Local Government Acts** has the meaning given to it in the Constitution;

**Nelson Airport Shares** has the meaning given to that term in the Agreement for Sale and Purchase;

**Party** means, as the context requires, any one or all of the Parties to this agreement and (on execution of an Accession Deed) any Additional Shareholder;

**Port Nelson Shares** has the meaning given to that term in the Agreement for Sale and Purchase;

<b>Purchase Price</b>	has the meaning given to that term in the Agreement for Sale and Purchase;
<b>Settlement</b>	has the meaning given to that term in the Agreement for Sale and Purchase;
<b>Share</b>	means any share in the Company;
<b>Shareholder</b>	means a person for the time being registered in the Company's Share register as the holder of one or more Shares;
<b>Statement of Intent</b>	has the meaning given to it in the Constitution, and where the context requires, means the most recent Statement of Intent;
<b>Subsidiary</b>	means any company or limited partnership in which the Company holds a majority of the Equity;
<b>Term</b>	has the meaning given in clause 14.1;
<b>Unanimous Resolution</b>	means a resolution that is approved by all of the votes of those Shareholders entitled to vote and voting on the relevant matter; and
<b>Working Day</b>	means any day other than a Saturday, Sunday, or statutory public holiday in Nelson, New Zealand. A Working Day is deemed to commence at 9.00 am and end at 5.00 pm.

### Interpretation

- 1.2 In this agreement, unless the context otherwise requires:
- (a) A reference to a person includes any other entity or association recognised by law and vice versa.
  - (b) Words referring to the singular include the plural and vice versa.
  - (c) The word including and other similar words do not imply any limitation.
  - (d) Any reference to a Party includes its successors or permitted assigns or both.
  - (e) Where a Party is made up of more than one person, the liability of each of those persons is joint and several.
  - (f) Words importing any gender will include all other genders.
  - (g) Clause headings are for reference only.
  - (h) References to clauses and schedules are references to clauses of, and schedules to, this agreement.
  - (i) Reference to any document includes reference to that document as amended, novated, supplemented, or replaced from time to time.
  - (j) References to money will be New Zealand currency, unless specified otherwise.

- (k) Expressions referring to **writing** will be construed as including references to words printed, typewritten, or otherwise visibly represented, copied, or reproduced (including by electronic mail).
- (l) References to statutory provisions will be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time.

## 2. Objectives of the Company

- 2.1 The Shareholders intend to carry on the Business in the name of the Company and must at all times during the Term:
- (a) as the Company is a Council-Controlled Trading Organisation, comply with the Local Government Acts;
  - (b) use their reasonable endeavours to co-operate with each other to ensure the efficient operation of the Business; and
  - (c) carry on the Business and procure that any Director appointed by that Shareholder carries on the Business, in compliance with all laws.
- 2.2 Unless this agreement is varied by Unanimous Resolution, the Company may not engage in any business or activity which is not the Business or reasonably incidental to the Business.

## 3. Share subscriptions

### Initial Issue

- 3.1 On incorporation, the Company issued 84,460 ordinary Shares to the Shareholders and agreed with the Shareholders that the consideration in respect of the issuance of such shares would be paid in accordance with the terms set out in clause 3.5:

Shareholder	Number of Shares	Issue Price	Subscription Amount
Tasman District Council	42,230	\$100	\$4,223,000
Nelson City Council	42,230	\$100	\$4,223,000

- 3.2 Immediately following the Effective Date, the Company will issue and the Shareholders will subscribe for a further 3,709,540 ordinary Shares for the consideration and to the Shareholders in the proportions set out below, with such consideration to be paid in accordance with the terms set out in clause 3.5:

Shareholder	Number of Shares	Issue Price	Subscription Amount
Tasman District Council	1,854,770	\$100	\$185,477,000

Nelson City Council	1,854,770	\$100	\$185,477,000
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### General

- 3.3 The Shares issued pursuant to clauses 3.1 and 3.2 of this agreement will, on fulfilment by each Shareholder of their respective obligations to pay the Subscription Amounts recorded opposite their respective names in the tables contained in clauses 3.1 and 3.2 of this agreement, be credited as fully paid up.
- 3.4 In consideration of the Shareholders subscribing for the Shares in the Company in accordance with this agreement, the Company makes the following warranties, representations and undertakings to the Shareholders:
- (a) the Shares have been or will be (as applicable) issued to each Shareholder free and clear of any encumbrance, charge or other claim by a third party; and
  - (b) all requirements of the Act and the Constitution have been, or will be, complied with on a timely basis in relation to the issue of the Shares and the execution of this agreement and the allotment and issue of the Shares have been authorised by all necessary corporate and other acts and do not violate any trust deed, instrument, agreement or other arrangement to which the Company is party.
- 3.5 On the date of Settlement:
- (a) each Shareholder must pay the Subscription Amounts recorded opposite their respective names in the tables contained in clauses 3.1 and 3.2 in full to the Company; and
  - (b) the Company must pay the Purchase Price in full to the Shareholders in accordance with the Agreement for Sale and Purchase.
- 3.6 The parties agree that the amount payable by each Shareholder pursuant to clause 3.5(a) will be set off against the amount payable by the Company pursuant to clause 3.5(b), with the intent that on the date of Settlement, the consideration paid for the Shares issued under this agreement will be applied in full payment of the Purchase Price on a cashless basis.
- 4. Inconsistency with other documents**
- 4.1 If there is a conflict or inconsistency between this agreement and the Constitution or any other document between the Parties or any of them, this agreement will prevail to the extent of that inconsistency.
- 4.2 To give effect to clause 4.1, if any Shareholder gives notice to the other Shareholders, the Shareholders will:
- (a) do all such things and sign all such documents necessary to alter the Constitution or any other document between the Shareholders or any of them to remove any inconsistency or conflict; and
  - (b) pass a Unanimous Resolution (as the case may require) to approve and ratify any and all past acts of the Board, the Company or the Shareholders done in

accordance with this agreement, which might otherwise be invalid as a result of any conflict or inconsistency with the Constitution.

## 5. Directors

5.1 Directors (including an Independent chairperson) are to be appointed in accordance with clauses 12.1 to 12.14 of the Constitution.

5.2 Directors are to be remunerated in accordance with clause 12.22 of the Constitution.

5.3 Any appointment of a director of a Subsidiary, and any remuneration of any such director, is to be made by the Board.

5.4 The Company will:

(a) indemnify each Director; and

(b) effect insurance,

in accordance with any part or all of section 162 of the Act. The Shareholders will take all reasonable steps to cause the Board to do this.

## 6. Key Decisions

The Board must not, and must not cause the Company to do any of the following, unless first approved in writing by Unanimous Resolution:

(a) enter into any "major transaction" as defined in the Act;

(b) make any material disposal of assets which are not budgeted for and/or provided for in the Statement of Intent in the relevant Financial Year (or any series of related disposals which, if considered together, would be material); or

(c) engage in any business or activity which is not the Business or reasonably incidental to the Business; or

(d) undertake any capital raising or external debt financing or refinancing that is not in accordance with the Company's corporate treasury structure policies or existing lending and/or borrowing agreements; or

(e) enter into, terminate or grant a waiver of rights under, or material amendment to, any contract in relation to a transaction with a Shareholder or a Subsidiary which has not been included in an approved budget, Statement of Intent or otherwise previously approved; or

(f) grant any security interest over the assets of the Company, other than in the ordinary course of business or as permitted by the Company's policies regarding the granting of security interests and/or the Company's existing lending and/or borrowing agreements; or

(g) appoint an administrator or take a step to liquidate, dissolve or wind up the Company; or

(h) make any decision to undertake an initial public offering; or

- (i) make any alteration to, or revocation of, the Constitution or the adoption of a new constitution for the Company; or
- (j) issue, cancel, buy-back or make any reduction of Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares; or
- (k) transfer any Shares held by the Company or purchase or otherwise acquire its own Shares; or
- (l) approve any transfer of Shares by any Shareholder; or
- (m) give financial assistance for the purposes of, or in connection with, the purchase of Shares; or
- (n) consolidate, divide or subdivide any Shares or create, alter or cancel any rights attaching to Shares; or
- (o) apply any amounts available for distribution in paying up Shares or other securities; or
- (p) exercise the right to issue shares in lieu of dividends conferred by section 54 of the Act; or
- (q) make any amendment to this agreement not expressly contemplated by the provisions of this agreement; or
- (r) create, acquire or sell any Subsidiary.

## 7. Loans and guarantees

No Shareholder will be required to:

- (a) make any loans to the Company; or
- (b) guarantee the obligations of the Company to a creditor,

except with the express agreement of that Shareholder and then only in accordance with all applicable laws.

## 8. Dividends

The dividend policy of the Company must be included in each annual Statement of Intent and accordingly approved by Unanimous Resolution.

## 9. Additional Shareholders

- 9.1 Shares may only be transferred in accordance with the Constitution.
- 9.2 Before a person becomes an Additional Shareholder, they must execute an Accession Deed.
- 9.3 The Board will refuse to approve a transfer of Shares if this clause is not complied with.

## 10. **Grant of security over Shares**

A Shareholder may not mortgage or pledge as security its Shares to any person without obtaining the prior written consent of all other Shareholders.

## 11. **Provision of information**

11.1 The Company must comply with the reporting obligations of Council-Controlled Trading Organisations in accordance with the Local Government Act 2002, including producing an annual Statement of Intent and the publication of required reports.

11.2 The Parties agree that they will ensure that:

- (a) each Subsidiary complies with any applicable reporting obligations under the Local Government Act 2002, the Port Companies Act 1988 and any other relevant legislation; and
- (b) prior to incorporation of any Subsidiary, the Parties will agree the timing and content of regular reporting to be provided by the Subsidiary to the Company.

## 12. **Confidentiality**

12.1 Subject to clause 12.2, each Shareholder will keep confidential, and make no disclosure of:

- (a) the contents of this agreement;
- (b) all information obtained from the other Shareholder under this agreement or in the course of negotiations in respect of this agreement; and
- (c) all information obtained from the Company, or developed or held for the purposes of the Company,

(together, **Confidential Information**).

12.2 Confidential Information may be disclosed if:

- (a) disclosure is required by law, or is necessary to comply with the listing rules of any recognised stock exchange; or
- (b) that Confidential Information already is, or becomes, public knowledge other than as a result of a breach of this clause by that Shareholder; or
- (c) disclosure is made to an officer, employee, agent, contractor, financier, lawyer, accountant, or other professional adviser for that Shareholder on a need-to-know basis and such person is advised of the confidentiality obligations under this clause and reasonable security measures are put in place to safeguard the Confidential Information; or
- (d) disclosure is authorised in writing by the other Shareholders and then only on the terms, if any, specified in such written authority.

12.3 If any Shareholder is permitted by this agreement and by law to make a disclosure or announcement under the preceding clause, before doing so they must:



- (a) give to the other Shareholder the maximum notice reasonably practicable in the circumstances, specifying the requirement under which it is required to disclose Confidential Information, and the precise Confidential Information which it is required to disclose;
- (b) comply with all reasonable directions by the other Shareholders to contest or resist the requirement to disclose Confidential Information; and
- (c) consult in good faith with the other Shareholders with a view to agreeing on the form and timing of the disclosure.

12.4 The provisions of this clause will survive the termination or expiration of this agreement.

### 13. **Governance and Appointments Committee**

13.1 The Company will have a Governance and Appointments Committee to recommend to the Board the appointments for which the Company is responsible, including the appointment of directors to any Subsidiary.

13.2 The Governance and Appointments Committee will have a maximum of six members and not less than three.

13.3 Nelson City Council is entitled to appoint one member to the Governance and Appointments Committee at any time and may likewise remove and/or replace that member at any time, in each case by notice in writing to the Company signed by a duly authorised officer of Nelson City Council.

13.4 Tasman District Council is entitled to appoint one member to the Governance and Appointments Committee at any time and may likewise remove and/or replace that member at any time, in each case by notice in writing to the Company signed by a duly authorised officer of Tasman District Council.

13.5 The Board shall be entitled to appoint, remove and replace up to four members to the Governance and Appointments Committee at any time.

13.6 Each member of the Governance and Appointments Committee holds office until his or her resignation, retirement, disqualification or removal in accordance with this agreement.

13.7 The Governance and Appointments Committee will elect one of their number to be chairperson.

13.8 A quorum for a meeting of the Governance and Appointments Committee will be three members (including the member appointed in accordance with each of clauses 13.3 and 13.4) present in person or by means of audio, or audio and visual, communication. The members must all be able to simultaneously hear each other throughout the meeting.

13.9 To avoid doubt, no decision or recommendation to the Board may be made by the Governance and Appointments Committee at any meeting where a quorum is not present.

13.10 Except as otherwise provided in this agreement, the Governance and Appointments Committee may regulate its procedure and meetings as it considers fit.

## 14. Term

14.1 The term of this agreement (**Term**) will commence on the Effective Date and continue until it is terminated on the earlier of the date on which:

- (a) the Shareholders unanimously agree in writing to terminate this agreement;
- (b) the Company is liquidated in accordance with this agreement or the Act; or
- (c) one Shareholder owns all of the Shares.

In the case of any Shareholder, it will also cease to apply in respect of that Shareholder when that Shareholder ceases to hold (whether beneficially or legally) any Shares. However, that Shareholder will remain liable to fulfil its obligations under this agreement or under any legislation prior to its ceasing to hold any Shares.

14.2 Termination of this agreement will not affect the rights and obligations of the Parties which are intended to survive the termination of this agreement. Such termination will be without prejudice to, and will not be deemed a waiver of any claims which any Party may have against any other Party in respect of any breach or other failure to comply with any provision of this agreement prior to the date of termination.

## 15. Dispute resolution

15.1 If any Party has any dispute (**Dispute**) with any other Party in connection with this agreement:

- (a) that Party will promptly give full written particulars of the Dispute to the others; and
- (b) the Parties will promptly meet together and in good faith try to resolve the Dispute.

15.2 If the Dispute is not resolved within 20 Working Days of written particulars being given (or any longer period agreed to by the Parties), the Dispute will be referred to mediation by either Party giving written notice of such referral to mediation to the other.

15.3 Until mediation ceases, neither Party may commence arbitration or legal proceedings.

15.4 The mediation procedure is:

- (a) the Party who wishes to resolve a Dispute must give a notice of Dispute to the other Party;
- (b) the notice must state that the Dispute has arisen, and state the matters in dispute;
- (c) when the notice has been given the Parties will appoint a mediator. If they fail to appoint a mediator within 10 Working Days, on request by either Party, the mediator will be appointed by the President of the New Zealand Law Society or the President's nominee;
- (d) the Parties must co-operate with the mediator in an effort to resolve the Dispute;
- (e) if the Dispute is settled, the Parties must sign a copy of the terms of the settlement;

- (f) if the Dispute is not settled within 20 Working Days after the mediator has been appointed, or within any extended time that the Parties agree to in writing, the mediation must cease; and
  - (g) the Company will pay the mediator's fee and costs including travel, room hire, refreshments.
- 15.5 The terms of settlement bind the Parties and override the terms of this agreement if there is any conflict.
- 15.6 The terms of settlement may not be used as evidence in any mediation, arbitration or legal proceedings except with the prior written approval of all Parties.
- 15.7 Written statements given to the mediator or to one another, and any discussions between them or between them and the mediator during the mediation are not admissible by the recipient in any arbitration or legal proceedings.
- 15.8 This clause will not apply to an application by either Party seeking urgent interlocutory relief from any court.
- 15.9 Pending resolution of any Dispute the Parties will perform this agreement in all respects including performance of the matter which is the subject of dispute.
- 15.10 Either Party may commence arbitration when the mediation procedure ceases by giving written notice to the other Party.
- 15.11 The arbitration will be conducted by one arbitrator appointed by the Parties. If they cannot agree on an arbitrator within 10 Working Days, on request by either Party, the appointment will be made by the President of the New Zealand Law Society or the President's nominee.
- 15.12 The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.
- 15.13 Neither Party will unreasonably delay the dispute resolution procedures in this clause.
- 15.14 This clause does not apply to:
- (a) any dispute arising in connection with any attempted renegotiation of this agreement; or
  - (b) an application by either Party for urgent interlocutory relief.
- 16. General provisions**
- Exclusion of implied relationships**
- 16.1 Nothing contained in this agreement will be deemed or construed to constitute any Party a partner, agent, or representative of any other Party, or to create any trust, and this agreement must not be construed as giving to any Party any of the rights or subjecting any Party to any of the liabilities incidental to a partnership, agency, representative or trust relationship. No Party may make any warranties or representations or incur any obligation on behalf of any other Party.

**Costs**

- 16.2 The Parties will ensure that the Company pays the legal costs of the Parties associated with the preparation and negotiation of this agreement and all related ancillary documents.

**Assignment**

- 16.3 Except as provided elsewhere in this agreement, no Party may assign, transfer or novate any of that Party's rights or obligations under this agreement.

**Entire agreement**

- 16.4 This agreement constitutes the entire agreement between the Parties as to its subject. It supersedes and cancels any previous agreement, understanding, or arrangement whether written or oral. The Parties agree that it is fair and reasonable that this clause is conclusive between them, as required by section 50 of the Contract and Commercial Law Act 2017.

**Further assurance**

- 16.5 Each Party will execute all documents and do all other acts and things which are both reasonable and necessary to carry out its obligations under, and the intention of, this agreement.

**Severance**

- 16.6 If any provision of this agreement is held to be unenforceable, illegal or invalid by any court or tribunal:
- (a) the rest of this agreement will remain in full force and effect;
  - (b) the Parties will co-operate to ensure that the spirit and intention of this agreement is carried out as far as is reasonably possible; and
  - (c) the Parties will, if necessary, amend this agreement accordingly.

**Waiver**

- 16.7 None of the provisions of this agreement will be considered to have been waived by a Party except when such waiver is given in writing.
- 16.8 No delay or omission of any Party in exercising any right, power, privilege or remedy (each, a **Right**) under this agreement will operate to impair such Right or be construed as a waiver of such Right. Any single or partial exercise of any such Right will not preclude any other future exercise of such Right or the exercise of any other Right.
- 16.9 No waiver by a Party of any breach will be deemed a waiver of any continuing or recurring breach unless it is expressly agreed in writing to be so by that Party.

**Notices**

- 16.10 Any notice or other communication (**Notice**) given under this agreement must be in writing.
- 16.11 A notice may be served personally or sent to the relevant Party's following communication points:

**Tasman District Council**      Address: 189 Queen Street, Richmond  
 Representative: Mike Drummond, Group Manager-  
 Finance  
 Email: Mike.Drummond@tasman.govt.nz

**Nelson City Council**      Address: 110 Trafalgar Street, Nelson  
 Representative: Nikki Harrison, Group  
 Manager Corporate Services  
 Email: nikki.harrison@ncc.govt.nz

**Company**      Address: 8 Vickerman Street, Port Nelson, Nelson  
 Representative: Daryl Wehner, Chief Financial  
 Officer, Port Nelson Limited  
 Email: daryl.wehner@portnelson.co.nz

16.12 Each Party will notify the other in writing of any changes to the communication points.

16.13 Notices are deemed served at these times when:

- (a) given personally, on delivery; or
- (b) sent by email, as evidenced by the sender's sent email history, unless another party can prove it was not received.

16.14 Any notice served on a Saturday, Sunday or public holiday is deemed served on the first Working Day after that day.

16.15 If the Party is a company or limited partnership, the notice may be given to a director of that Party or a director of the general partner of that Party or the Representative named above, if any.

16.16 Time is of the essence.

#### **Governing law and jurisdiction**

16.17 This agreement is governed by and construed according to the laws of New Zealand and the Parties submit to the exclusive jurisdiction of the courts of that jurisdiction in respect of any dispute or proceeding arising out of this agreement.

#### **Counterparts**

16.18 This agreement may be executed by each signatory in separate counterpart copies, whether originals, photocopies, or electronic copies. When each signatory has executed at least one copy, the separately signed documents when brought together will form a binding legal document.

**Signed by**

---

Signed by **Tasman District Council** by its duly authorised officer in the presence of:

\_\_\_\_\_  
Janine Dowding, Chief Executive Officer

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

Signed by **Nelson City Council** by its duly authorised officer in the presence of:

\_\_\_\_\_  
Nigel Philpott, Chief Executive

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

Signed by **Infrastructure Holdings Limited** as the Company:

\_\_\_\_\_  
Director's signature

\_\_\_\_\_  
Director's signature

\_\_\_\_\_  
Director's full name

\_\_\_\_\_  
Director's full name

**Agreement for Sale and Purchase of  
Shares in Port Nelson Limited and Nelson  
Airport Limited**

between

Nelson City Council

and

Tasman District Council

and

Infrastructure Holdings Limited

**PITT & MOORE**  
LAWYERS AND NOTARIES PUBLIC

SER-023544-426-59-V1

**Agreement for Sale and Purchase of Shares in Port Nelson Limited and Nelson Airport Limited**

Date: 2023

**Parties**

Nelson City Council (NCC)

Tasman District Council (TDC)

(Vendor)

Infrastructure Holdings Limited (Purchaser)

**Agreement**

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**1. Definitions and interpretation****Definitions**

1.1. In this agreement, unless the context otherwise requires:

<b>Company or Companies</b>	means Port Nelson Limited and Nelson Airport Limited, further details of which are set out in schedule 1;
<b>Encumbrance</b>	includes any mortgage, charge, lien, pledge, hypothecation, restriction against transfer, encumbrance, option, right of pre-emption and other security interest or third party interest (whether legal or equitable);
<b>Nelson Airport Shares</b>	1,200,000 ordinary shares owned by TDC and 1,200,000 ordinary shares owned by NCC (being together all the ordinary shares) on the date of this agreement;
<b>Port Nelson Shares</b>	12,707,702 ordinary shares owned by TDC and 12,707,702 ordinary shares owned by NCC in Port Nelson Limited (being together all the ordinary shares) on the date of this agreement;
<b>Purchase Price</b>	means \$379,400,00 in total, \$189,700,000 of which is payable to each Vendor;
<b>Settlement</b>	means the point in time where the settlement obligations of the Purchaser are completed in accordance with this agreement;
<b>Settlement Date</b>	means 1 July 2023 or such other date agreed between the parties in writing;
<b>Shares</b>	means the Port Nelson Shares and the Nelson Airport Shares;
<b>Shareholders' Agreement</b>	means the shareholders' agreement between the Vendors and the Purchaser dated on or about the date of this agreement in relation to shares held in the Purchaser; and
<b>Subscription Amount</b>	means the total amount to be paid up by each Vendor to the Purchaser in respect of the issue of the ordinary shares in the Purchaser pursuant to clauses 3.1, 3.2 and 3.5 of the Shareholders' Agreement.



**Interpretation**

- 1.2. In this agreement, unless the context otherwise requires:
- a) A reference to a person includes any other entity or association recognised by law and vice versa.
  - b) Words referring to the singular include the plural and vice versa.
  - c) Any reference to a party includes:
    - (i) that party's executors, administrators, or permitted assigns; or
    - (ii) if a company, limited partnership, or any other body corporate, its successors or permitted assigns or both.
  - d) Clause headings are for reference only.
  - e) References to clauses and schedules are references to clauses of and schedules to this agreement.
  - f) Reference to any document includes reference to that document as amended, novated, supplemented, or replaced from time to time.
  - g) References to money will be New Zealand currency, unless specified otherwise.
  - h) Expressions referring to writing will be construed as including references to words printed, typewritten or otherwise visibly represented, copied or reproduced (including by fax or email).
  - i) In this agreement, time is of the essence.
2. **Sale and purchase of Shares**
- 2.1. Each Vendor agrees to sell its Shares, and the Purchaser agrees to purchase the Shares, together with all rights attached to them, for the Purchase Price with effect from Settlement and in accordance with this agreement.
- 2.2. The Shares will be sold and purchased free of all Encumbrances.
- 2.3. The Shares will be sold and purchased with all benefits, rights, privileges and entitlements which accrue or attach to them as at the date of this agreement including the right to all bonuses, dividends and other distributions made or paid in respect of the Shares on or after the date of this agreement.
3. **Purchase price**
- Payment of purchase price**
- 3.1. On the Settlement Date, the Purchaser must pay the Purchase Price to each Vendor in the portions described in the definition of "Purchase Price".
- 3.2. The Purchase Price must be paid in cleared funds, subject to clause 3.3, without any set-off, deduction, or withholding to such bank account as each Vendor nominates in writing before the Settlement Date.

- 3.3. The Purchaser may satisfy its obligation to pay each Vendor its portion of the Purchase Price by way of set-off against the Subscription Amount payable to the Purchaser in accordance with the Shareholders' Agreement.

**Lower price**

- 3.4. The purchase price for the Shares is the lowest price that the parties would have agreed on for them at the date this agreement is entered into under the rules relating to the accrual treatment of income and expenditure in the Income Tax Act 2007 and on that basis, no income or expenditure arises in respect of the sale and purchase of the Shares under those rules.

**Pre-emptive rights**

- 3.5. The Vendors, being all the ordinary shareholders in each of Port Nelson Limited and Nelson Airport Limited, agree that any pre-emptive rights they may have in connection with a transfer of any of the Shares are waived.

**4. Settlement**

**Vendors' obligations**

- 4.1. On Settlement, and as a condition of Settlement, each Vendor must deliver to the Purchaser:
- a) a transfer of its Shares to the Purchaser executed by that Vendor;
  - b) evidence satisfactory to the Purchaser that the transfer of its Shares to the Purchaser has been recorded in each Companies' respective share register so that the Purchaser is recorded as the legal owner of the Shares;
  - c) resolutions of the board of directors of each Company approving the transfers of the respective Shares and directing that on presentation of the executed transfer, the Purchaser be entered in each Company's register of shareholders; and
  - d) evidence satisfactory to the Purchaser that sole title in the Shares will vest in the Purchaser free from any Encumbrances, at Settlement.
- 4.2. The Vendors will procure that on the Settlement Date there will be, in the possession and control of each Company:
- a) all registers and statutory records required by the Companies Act 1993 and all other books, records and documents relating to each Company's affairs; and
  - b) all books of record and account (including all tax returns, statement of taxation, account and correspondence with IRD) of each Company and all computerised records of each Company.

**Purchaser's obligations**

- 4.3. On Settlement, subject to compliance by the Vendor with all of its obligations under clause 4.1 and 4.2, the Purchaser will pay the Purchase Price to the Vendors in accordance with clause 3.

**Title, Property and Risk**

- 4.4. Subject to Settlement occurring, title to, possession of, property in and the benefit and risk of, the Shares:
- a) until Settlement, remains solely with the Vendors; and

- b) on and from Settlement, passes to the Purchaser .

**5. Share Register**

- 5.1. The Purchaser will ensure that the share registers of each Company are updated to reflect the sale of the Shares promptly following Settlement.

**6. Kiwi Share**

- 6.1. The Kiwi Share (as defined in the constitution of Nelson Airport Limited) is not being transferred.

**7. Warranties and undertakings**

- 7.1. As at the date of this agreement and again on the Settlement Date, the Vendors each warrant to the Purchaser, and the Purchaser warrants to each Vendor, that:
  - a) it has full power and authority to sign and perform this agreement, and has taken all necessary action to authorise this agreement's execution, delivery and performance; and
  - b) this agreement constitutes a valid and binding obligation enforceable against it in accordance with its terms.
- 7.2. As at the date of this agreement and again on the Settlement Date, each Vendor warrants to the Purchaser that:
  - a) it is the legal and beneficial owner of the Shares with title to them to the exclusion of all others;
  - b) the Shares are fully paid up; and
  - c) the Shares are free from all Encumbrances.

**8. General**

**Further Assurance**

- 8.1. Each party will execute all documents and do all other acts and things which are both reasonable and necessary to carry out its obligations under, and the intention of, this agreement.

**Waiver**

- 8.2. No failure or delay by a party to exercise (in whole or in part) any right, power or remedy under this agreement will operate as a waiver of that right, power or remedy.
- 8.3. The single or partial exercise of any right, power or remedy under this agreement does not preclude the exercise of any other right, power or remedy, or its further exercise.
- 8.4. A waiver given by a party will not be effective unless it is in writing and is signed by the party against whom it is claimed.
- 8.5. Any waiver given by a party in accordance with this clause will be effective only in the specific instance and for the specific purpose for which it is given.

**Non-merger**

- 8.6. This agreement, and anything done under or in connection with this agreement, will not operate as a merger of any of the rights, powers, or remedies of either party under or in connection with this agreement or at law. Those rights, powers, and remedies will survive and continue in full force and effect to the extent that they are unfulfilled.

**Entire agreement**

- 8.7. This agreement constitutes the entire agreement between the parties as to its subject. It supersedes and cancels any previous agreement, understanding, or arrangement whether written or oral. The parties agree that it is fair and reasonable that this clause is conclusive between them, as required by section 50 of the Contract and Commercial Law Act 2017.

**Survival**

- 8.8. Any provision of this agreement which by its nature is intended to survive the termination, Settlement, or expiration of this agreement will survive the termination, Settlement, or expiration of this agreement.

**Counterpart**

- 8.9. This agreement may be executed by each signatory in separate counterpart copies, whether originals, photocopies, fax, or electronic copies. When each signatory has executed at least one copy, the separately signed documents when brought together will form a binding legal document.

**Copies**

- 8.10. Any copy of this agreement that is received by facsimile or via email in PDF or other document reproduction format (including any copy of any document evidencing a party's signature to this agreement) may be relied on by any party as though it were an original copy of this agreement.

**Amendment**

- 8.11. No amendment to this agreement will be effective unless it is in writing and signed by each party.

**Execution**

Signed by **Nelson City Council** as Vendor by its Chief Executive under delegated authority in the presence of:

\_\_\_\_\_  
Chief Executive

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

Signed by **Tasman District Council** as Vendor by its Chief Executive Officer under delegated authority in the presence of:

\_\_\_\_\_  
Chief Executive Officer

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

Signed by **Infrastructure Holdings Limited** as  
Purchaser:

\_\_\_\_\_  
Director's Signature

\_\_\_\_\_  
Director's Signature

\_\_\_\_\_  
Director's full name

\_\_\_\_\_  
Director's full name

**SCHEDULE 1  
COMPANIES**

**Company name:** Port Nelson Limited

Company Number: 401730

Place of Incorporation: New Zealand

Incorporation Date: 29 September 1988

Registered Office: 8 Vickerman Street, Port Nelson, Nelson 7010, New Zealand

Directors: Megan Ruth Matthews, Guy Roper, Jonathan Peter Safey, Kim Louise Wallace, Gerrard Llewellyn Wilson and Paul Alan Zealand

Issued Shares: 25,415,404

Shareholders: Nelson City Council and Tasman District Council

**Company Name:** Nelson Airport Limited

Company Number: 663266

Place of Incorporation: New Zealand

Incorporation Date: 9 May 1996

Registered Office: Nelson Airport Management Offices, Trent Drive, Nelson 7011, New Zealand

Directors: Matthew Clarke, Quinton Charles Hall, Emma Jane Ihaia, Darren Nicholas Mark, and Matthew Dudley McDonald

Issued Shares: 2,400,001

Shareholders: Nelson City Council, Tasman District Council and Her Majesty the Queen (Ministry of Transport)

**INFRASTRUCTURE HOLDINGS LIMITED**

Company number 8572709

(Company)

**UNANIMOUS SHAREHOLDERS' RESOLUTIONS AND  
ENTITLED PERSONS' AGREEMENT**

passed in writing under sections 32, 50, 107(2), 122 and section 129 of the Companies Act 1993  
(Act) and clauses 3.4 and 11.5 of the Company's constitution

**Restructuring Transactions**

**BACKGROUND**

On or before the date of these resolutions, the Company's directors passed the Establishment Resolutions attached at Schedule 1 and subsequent board resolutions attached at schedule 2 (**Board Resolutions**). Unless otherwise defined in these resolutions, terms defined in the Board Resolutions have the same meanings in this document.

The Establishment Resolutions and the Board Resolutions (among other things):

- record the Initial Issue;
- approve the Company's entry into, execution, and performance of the Restructuring Documents and the Restructuring Transactions (including the Second Share Issue), and the Intra-Group Loan Agreements and the Intra-Group Loans, once this document has been executed by each shareholder of the Company (**Shareholder**) and each entitled person of the Company (as that term is defined in section 2(1) of the Act) (**Entitled Person**);
- approve the Second Share Issue on the terms set out in the Shareholders' Agreement; and
- record the adoption of the Constitution by the Company.

NCC and TDC together constitute, through their separate shareholdings, all the Shareholders and Entitled Persons.

**NOTED**

**Interested Directors**

Each of the Company's directors has confirmed that he or she is not interested (within the meaning of section 139 of the Act) in the Initial Issue, the Restructuring Transactions (including the Second Share Issue), or the Intra-Group Loans.

**Shareholder and Entitled Persons Approvals Required**

The Directors have asked the Shareholders and the Entitled Persons (as relevant) to unanimously approve, confirm and ratify the Establishment Resolutions and the Board Resolutions for the following reasons.

***Initial Issue***



The Initial Issue as described in the Establishment Resolutions and the Board Resolutions requires the approval of all Shareholders and Entitled Persons for all purposes (including under any requirement of the Act).

**Major transactions**

The Company's entry into the Restructuring Transactions (including the Second Share Issue) and the Intra-Group Loans, and execution of the Restructuring Documents and Intra-Group Loan Agreements, as described in the Board Resolutions, are or may be major transactions (within the meaning of section 129 of the Act) and, accordingly, require the approval of the Shareholders by unanimous shareholder resolution.

**Second Share Issue**

The Second Share Issue, as described in the Board Resolutions, requires the approval of all Entitled Persons on the basis that that Second Shares will be issued in accordance with:

- (a) section 107(2) of the Act, so that the Second Shares may be issued otherwise than in accordance with sections 42, 44 or 45 of the Act; and
- (b) clause 3.4 of the Constitution.

**Constitution**

The adoption of the Constitution as described in the Establishment Resolutions and Board Resolutions requires the approval of the Shareholders by special resolution in accordance with section 32 of the Act.

**RESOLVED**

It is resolved, as special and unanimous shareholder resolutions, that the:

1. Initial Issue be ratified for all purposes (including under any requirement of the Act);
2. the Company's entry into, execution, and performance of the Restructuring Documents and the Restructuring Transactions (including the Second Share Issue), and the Intra-Group Loan Agreements and Intra-Group Loans, be approved for all purposes, including for the purposes of section 129 of the Act;
3. Establishment Resolutions and Board Resolutions be confirmed, approved, and ratified;
4. the Constitution in the form attached at schedule 3 be adopted as the constitution of the Company;
5. Company's entry into, execution, and performance of the Restructuring Documents and the Restructuring Transactions (including the Second Share Issue), and the Intra-Group Loan Agreements and Intra-Group Loans (as those documents may be varied from time to time), be valid and binding on the Company for all purposes, despite:
  - (a) any lack of or alleged lack of any sufficient benefit to the Company in entering into the Restructuring Transactions (including the Second Share Issue) and the Intra-Group Loans; and
  - (b) any other matter whatsoever; and

6. the Directors be authorised to:
- (a) execute the Restructuring Documents and the Intra-Group Loan Agreements; and
  - (b) give any notices and other communications, and do any other thing, under or in connection with, the entry into, execution and performance of the Restructuring Documents and the Restructuring Transactions (including the Second Share Issue), and the Intra-Group Loan Agreements and Intra-Group Loans (as those documents may be varied from time to time).

#### ENTITLED PERSONS' AGREEMENT

By signing this document, each Entitled Person:

1. ratifies the Initial Issue for all purposes (including under any requirement of the Act);
2. confirms that it is aware of the terms of the Second Share Issue and approves the Second Share Issue on the terms set out in the Shareholders' Agreement for the purposes of section 107(2) of the Act and for all other purposes;
3. confirms that it is satisfied that the Company has received or will receive fair value from the Restructuring Transactions (including the Second Share Issue) and the Intra-Group Loans;
4. approves the Company's entry into, execution, and performance of the Restructuring Documents and the Restructuring Transactions (including the Second Share Issue), and the Intra-Group Loan Agreements and Intra-Group Loans, (as those documents may be varied from time to time), for all purposes, notwithstanding:
  - (a) any lack of or alleged lack of any sufficient benefit to the Company in entering into the Restructuring Transactions (including the Second Share Issue) and the Intra-Group Loans; and
  - (b) any other matter whatsoever;
5. consents, for the purposes of section 50 of the Act and for all other purposes, to becoming the holder of the Initial Shares and the Second Shares on the terms described in the Board Resolutions;
6. confirms that it gives this agreement under, and for the purposes of, sections 107(2), 107(4), and 107(5) of the Act, and that nothing in sections 42, 44 and 45 of the Act will apply in relation to the Second Share Issue;
7. confirms that it will not take action with a view to the Company seeking to avoid the Restructuring Transactions (including the Second Share Issue) or the Intra-Group Loans; and
8. authorises the Directors to update the Company's share register and arrange for all relevant documents to be filed with the Registrar of Companies to reflect the issue of the Initial Shares and the Second Shares.

**CONFIRMATION**

By signing this document, each Shareholder and Entitled Person confirms that it has received, read, and understood the Establishment Resolutions and the Board Resolutions.

**DATED**

**2023**

**SIGNED by NELSON CITY COUNCIL by:**

\_\_\_\_\_  
Nigel Philpott  
Chief Executive

**SIGNED by TASMAN DISTRICT COUNCIL by:**

\_\_\_\_\_  
Janine Dowding  
Chief Executive Officer

*(being all of the shareholders and entitled persons of the Company)*

DRAFT

**SCHEDULE 1**

**ESTABLISHMENT RESOLUTIONS**

**DRAFT**

**SCHEDULE 2**

**BOARD RESOLUTIONS**

**DRAFT**

**SCHEDULE 3**  
**CONSTITUTION**

DRAFT