

Policy on the appointment of directors to council organisations

Section 57 of the Local Government Act (LGA) 2002 (“the Act”) requires the council to have a policy on the appointment of directors to its council organisations. As at November 2022, Northland Regional Council partially owns:

- Marsden Maritime Holdings Limited;
- Northland Inc. Limited;
- Regional Software Holdings Limited (RSHL).

This policy applies when appointing directors to any of the above companies, noting that RSHL has a specific director appointment process as detailed in this policy.

Marsden Maritime Holdings Limited (MMH) is exempt from being a council-controlled organisation under section 6(4)(ca) of the Act, although under section 6(1) it is classified as a council organisation. Northland Inc. Limited and Regional Software Holdings Limited are council-controlled organisations.

Definitions

“Council organisations” include council-controlled organisations and council-controlled trading organisations. Each of these terms is defined in the Act:

“Council organisation”

A council organisation is any organisation in which the council has, directly or indirectly, a voting interest or the right to appoint a director, trustee or manager (however described). This is a wide-ranging definition, covering a large number of bodies.

“Council-controlled organisation”

A council-controlled organisation is an organisation in which the council, either on its own or when combined with other local authorities, controls, directly or indirectly, 50 percent or more of the votes or has the right, directly or indirectly, to appoint 50 percent or more of the directors, trustees or managers.

Other relevant legislation/regulation

In addition to this policy, appointments and reappointments to the boards of council organisations may be governed by their respective constitutions, trust deeds or, in some cases, specific legislation. Constitutions, trust deeds and legislation take precedence over this policy but internal policies of the council organisations do not.

Where ownership of council organisations is jointly or severally shared with other entities, governance requirements may be established through shareholder agreements, memorandum of understanding or equivalent documentation. This policy applies/takes precedence in regards to the appointment of directors unless specifically agreed otherwise.

Key principles of this policy

- Ensure that the council appointment process selects the best person for the role having regard to the needs of the organisation and the mix of skills on the board;
- All appointments will be made through an objective, transparent and accountable process;
- All appointments will be made on the basis of merit;
- All directors will be appointed on the basis of the contribution they can make to the organisation, not on the basis of representation; and
- That all parties share a clear and agreed approach to director appointments prior to the process commencing.

Appointment process

Vacancies will be advertised unless good reason exists not to. The power to decide not to advertise a vacancy is to reside with council but may be delegated to the Chief Executive Officer. In making a decision not to advertise, the council will consider:

- The costs of any advertisement and selection process;
- The already known availability of qualified candidates;
- The urgency of the appointment (e.g. a council organisation that is without a quorum cannot hold a board meeting);
- The degree of potential interest, including public interest, in the vacancy and
- Whether there is a high prospect that an incumbent will be reappointed.
- With the exception of MMH, an ad hoc committee will be established to consider applications and/or nominations, conduct interviews and make a recommendation on preferred candidate(s) to council. The ad hoc committee shall normally comprise councillors, including the council's shareholder representative (if any) for the organisation concerned. Other members may include key stakeholders, one or more directors of the council organisation, or any person who has particular knowledge or skills that would be beneficial in the selection process.
- Ad hoc committee members and candidates are required to declare any potential conflicts of interest.
- The council holds the majority of shares in MMH, and has the power and responsibility to appoint the directors through the AGM of MMH. MMH is a port company, and the Port Companies Act has provisions relating to the appointment of directors. MMH is also listed on the NZX, and the NZX Corporate Governance Code, while not binding, sets out what the NZX considers to be best practice for director appointments. In addition, the NZX rules contain process provisions for appointment of directors that MMH must comply with. The council will enter into a Memorandum of Understanding with the Board of MMH to ensure that all requirements are complied with, best practice is observed, and that the Key Principles described above are met. The MOU will be a public document.

General core competencies

A matrix for each council organisation will be developed to outline the skills and experience required of board members. All board members are expected to meet core competencies as well as relevant industry or other technical/specialist skills required for that particular board.

Person specifications

Nominees for specific vacancies shall be assessed and ranked for their particular skills, knowledge and experience using the matrix for that particular board.

Diversity

Diversity encompasses gender, ethnicity, disability, sexual orientation, family responsibilities, education and cultural background. In making its selection, the council shall actively support diversity and inclusion with a view to the board reflecting Northland demographics, and to ensure governance experience is gained by Northlanders.

Council believes that supporting diversity and inclusion when making board appointments will enhance the overall strength and capability of the governance function. In practice, this means that the appointment process will actively seek out people with a variety of backgrounds and abilities.

Appointment restrictions

- Councillors and council staff should not be appointed as directors, unless good reason exists for an exception. For example, where the council organisation is operational in nature and the Northland Regional Council Chief Executive Officer or designated staff member possesses the skills, knowledge and experience required to fulfil the role of a director, then council may appoint that person.
- Staff of the council organisation should not be appointed to its board. In the event a board decides one of its members should fill a vacancy in the organisation, the board member must first resign from their position on the board.
- Any board member applying for employment with the council shall offer to resign from the board immediately following an acceptance of appointment/confirmation of election.
- Any board member who is a candidate in a local body election (or a general election or placed on any political party's list) must offer to stand down from nomination day until the election results are notified.

Term of appointment

- Appointments shall be for a maximum three-year term, subject to any review the council considers necessary. Reappointment may not occur for reasons unrelated to the performance of the board member, such as other changes to the composition of the board or changes to the direction of the organisation or the environment in which it operates.
- Directors should have no expectation of re-appointment at the end of any three year term.
- The maximum number of consecutive terms for any director is three, but with reappointments exceeding six continuous years being considered on a case-by-case basis.
- The council shall generally review the performance of the organisation and its board after the local body elections.

Where reappointment of an incumbent is proposed, the council may decide that advertising the vacancy is inappropriate. Consideration will be given as to whether the reappointment will be consistent with the broader policies in this section; and in particular whether the reappointment of the incumbent:

- Will match the projected activities and governance requirements of the organisation;
- Is appropriate having regard to the mix of skills now on the board; and
- Will further the diversity policy.

Remuneration of directors of council organisations

- Remuneration for directors of council organisations will be determined on a case-by-case basis taking into account:
 - Each specific role;
 - Any existing legal or constitutional requirements;
 - The form and purpose of the organisation; and
 - Any previous level of fees paid by the shareholder.
- Directors are not to undertake consulting work for the organisation under any circumstances.

The remuneration section (above) of this policy does not apply to MMH because director remuneration and the ability to provide other services to the company is determined in accordance with its constitution and NZX rules.

Removal of directors

Directors may be removed from office in accordance with the constitution of the company and the general law; particularly section 156 of the Companies Act 1993 which provides for removal of a director by ordinary resolution of the shareholders.

RSHL – appointment of Directors process

The appointment of directors to RSHL’s Board will follow this process:

1. No later than 30 April, in each year, the RSHL Board will:
 - Determine the Directors retiring by rotation at the next annual meeting of shareholders. As per clause 7.7(b) of the Shareholders’ Agreement (and clause 11.6(b) of the Constitution), the number of Directors required to retire by rotation is two, less any vacancies that occurred throughout the financial year.
 - Determine the availability of the incumbent(s) for re-election.
 - Determine if the required appointment(s) must be independent.
 - Update the Board Skills Register, assessing the skills of the Board and identifying any gaps to consider during the upcoming appointment process.
 - Update the Board Representation Register, assessing the diversity of the Board and identifying any gaps to consider during the upcoming appointment process.
2. No later than 31 May, the CEO, on behalf of the Board, will approach the Class A Shareholding Councils and call for director nominations.

The Board will advise the Councils of:

- The number of vacancies,
- The availability of the Directors that are retiring by rotation at the next annual

meeting of shareholders,

- o The need for an independent appointment (if required),
- o Any current and pending skill and representation gaps within the Board.

Each Class A Shareholding Council, by completing a Notice of Nomination of Director(s) Form (per Appendix 1) is entitled to a maximum of one non independent nominee and one independent nominee.

3. No later than 30 June the Board will close nominations.
4. No later than 31 July the CEO, on behalf of the Board, will:
 - o Contact the nominees and obtain a copy of their CVs,
 - o Prepare and distribute a Directors appointment package to the Class A Shareholding Councils. The package will consist of:
 - ☐ A report on the vacancies, independence requirements, skill gaps and representation gaps,
 - ☐ A list of all nominee applicants and their CV's.
5. No later than 30 September the Class A Shareholding Councils will:
 - o Review the Director appointment package,
 - o Determine their preferred applicants (up to the number of vacancies).
 - o Advise the Board of their preferred applicants.
6. No later than 31 October the CEO, on behalf of the Board, will:
 - o Tabulate the Class A Shareholding Councils' selections to determine the preferred applicants.
 - o Advise all applicants of the outcome of the selections.
 - o Develop an Ordinary Resolution for the annual meeting of shareholders, for the appointment of the preferred applicants for the available vacancies.
7. At the annual meeting of shareholders, the Class A Shareholding Councils will vote on the Ordinary Resolution to appoint the preferred applicants to the vacant Director positions. If passed, the preferred applicants are appointed, if not passed, the positions remain vacant and as per clause 7.4(b) of the Shareholders' Agreement the Board may appoint any person to fill the casual vacancy.
8. In addition to the above, as per clause 7.4(b) of the Shareholders' Agreement, throughout the year, the Board may appoint any person to fill a casual vacancy or as an addition to the existing directors.
9. Any director appointed under clause 7.4(b) of the Shareholders' Agreement may hold office until the next annual meeting of shareholders and is then eligible for election at that meeting.

Recommended Class A Shareholding Council process:

1. No later than 31 May of each year, the Council will receive notification from the RSHL Board of:
 - o The number of vacancies,
 - o The availability of the Directors that are retiring by rotation at the next annual meeting of RSHL shareholders,
 - o The need for an independent appointment (if required),
 - o Any current and pending skill and representation gaps within the Board.

2. At the first available meeting the Council will consider:
 - o Supporting the re-election of any of the retiring Directors and not nominate an additional applicant.
 - o Supporting the re-election of any of the retiring Directors, along with nominating an additional applicant.
 - o Not supporting the re-election of any of the retired Directors and nominate an applicant.

Council's decision will be made on the basis of:

- o It's members own knowledge,
- o Reasonable enquiry of council staff,
- o Reasonable enquiry of the RSHL Board Chairman (or delegate).

If Council decides to nominate an applicant, it will obtain prior approval from them before completing the nominee application form and returning this to the RSHL Board. Nominations must be received by the Board prior to their closure.

3. No later than 31 July of each year, the RSHL Board will distribute the Director appointment package to all Class A Shareholding Councils.

4. No later than 30 September the Class A Shareholding Councils will:
 - o Review the Director appointment package,
 - o Make reasonable enquiry of the RSHL Board Chairman (or delegate).
 - o Determine their preferred applicants (up to the number of vacancies).
 - o Advise the Board of their preferred applicants

5. RSHL will tabulate the Class A Shareholding Councils' selections, advise the applicants and prepare a Director appointment resolution for the annual meeting of shareholders.

6. The Class A Shareholding Councils' will decide whether to vote "for" or "against" the Director appointment resolution at the annual meeting of shareholders.

Appendix 1

Private & Confidential

Regional Software Holdings Limited
12 Victoria Avenue
Palmerston North 4410

[By email: insert address]

[Date]

REGIONAL SOFTWARE HOLDINGS LIMITED (NZCN 4046521)
(Company)

NOTICE OF NOMINATION OF DIRECTOR[S]

Pursuant to clause 11 of the constitution of the Company, [insert shareholder's name] gives notice of the nomination of each person listed as a Nominated Director in Annex A as a director of the Company with effect on and from the applicable effective date specified in Annex A and to be voted on in accordance with the Company's director appointment process.

Signed for and on behalf of [insert shareholder's name] by:

.....
Signature of authorised person

.....
Name of authorised person

ANNEX A
Director[s] Nominated

Director[s] Nominated (the Nominated Directors)	Position	Effective Date
[insert name]	Non independent	[insert date]
[insert name]	Independent	[insert date]