



## Extraordinary Meeting of the Hawke's Bay Regional Council

**Date:** Wednesday 13 February 2019  
**Time:** 1pm  
**Venue:** Council Chamber  
Hawke's Bay Regional Council  
159 Dalton Street  
NAPIER

### Agenda

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ITEM	SUBJECT	PAGE
1.	Welcome/Apologies/Notices	
2.	Conflict of Interest Declarations	
3.	Confirmation of Minutes of the Regional Council Meeting held on 30 January 2019	
<b>Decision Items</b>		
4.	Additional Council Controlled Organisation to Support IPO Transaction Statement of Proposal for Consultation	3
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5.	Confirmation of Public Excluded Minutes of the Regional Council Meeting held on 30 January 2019	11

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# HAWKE'S BAY REGIONAL COUNCIL

Wednesday 13 February 2019

## Subject: ADDITIONAL COUNCIL CONTROLLED ORGANISATION TO SUPPORT IPO TRANSACTION STATEMENT OF PROPOSAL FOR CONSULTATION

Item 4

### Reason for Report

1. This report asks Council to adopt the attached Statement of Proposal to establish a new Council Controlled Organisation (CCO) to provide an efficient and effective structure to facilitate a potential minority share issue of Port of Napier Limited (Napier Port or Port).
2. The Council is required under section 56 of the Local Government Act 2002 (LGA) to undertake consultation before establishing a CCO.
3. The consultation document has been subject to a legal and tax review to confirm the document is fit for purpose.

### Background

4. The need for this consultation has arisen from the Regional Council's 'in principle' decision on 19 December 2018 to progress and refine an IPO transaction. Part of designing an IPO transaction is to determine the optimal structure to enable the most efficient offering of shares and the ongoing operation of a publicly-listed company.

### Scope of the Decision

5. The Council's preferred option in the Statement of Proposal is to establish a new CCO, provisionally named "HoldCo", to own shares in Napier Port and to act as the listed entity for the potential IPO.
6. The Council agreed its preferred option at its meeting on 30 January 2019, following advice from PWC and Bell Gully on the range of options for the legal and tax structures available.
7. The details of the HoldCo option are compared in the Statement of Proposal against the status quo option, which is for both Hawke's Bay Regional Investment Company Ltd (HBRIC) and Napier Port to sell shares.
8. As a result of feedback received during the consultation, the Council may change its preferred option.

### Consultation Process

9. As noted above, the establishment of a CCO requires consultation under section 56 of the LGA. The Council has discretion under this section of the LGA to decide the form the consultation takes.
10. The key dates for the consultation are:

18 February 2019	Consultation opens
1 March 2019	Consultation closes
13 March 2019 (1pm)	Set aside for people to present their views in person
27 March 2019	Decision made by the Regional Council
11. The Statement of Proposal will be posted on the council's website as soon as practicable after it is adopted. The consultation will be advertised in Hawke's Bay Today, posted to social media and emailed to interested and affected parties via the council's "Stakeholder Update" and those who have registered online for updates in relation to the IPO transaction.
12. The Council will invite submissions and feedback over a period of two weeks. Submissions will then be collated, heard and the final decision to establish a CCO made

by the end of March 2019. This timing aligns with the adoption of the LTP Amendment as already consulted upon.

13. Legal advice received considers that this relatively ‘streamlined’ consultation complies with the LGA consultation requirements in light of:
  - 13.1. the previous consultation (*Our Port – Have your say*) undertaken, particularly in relation to the assumption “*The Regional Council retains the ability to establish the appropriate structures to manage the transaction and the Regional Council’s continued ownership position in the Port, such as the possibility of creating new holding entities or corporate structures as required*”
  - 13.2. the nature of the decision (as a procedural step), and
  - 13.3. the Council’s discretion under the LGA.

### Decision Making Process

14. Council is required to make every decision in accordance with the requirements of the Local Government Act 2002 (the LGA). Staff have assessed the requirements in relation to this item and have concluded:
  - 14.1. The decision does not significantly alter the service provision or affect a strategic asset.
  - 14.2. The use of the special consultative procedure is not prescribed by legislation but consultation is required under section 56 of the LGA.
  - 14.3. The decision is not inconsistent with an existing policy or plan.

### Recommendations

That Hawke’s Bay Regional Council:

1. Receives and notes the “Additional Council Controlled Organisation to Support IPO Transaction Statement of Proposal for Consultation” staff report.
2. Agrees that the decisions to be made are in accordance with section 56 and 82 of the Local Government Act.
3. Agrees to the public consultation process as described above.
4. Adopts the Statement of Proposal as attached, for public consultation.

### Authored by:

**Drew Broadley**  
COMMUNITY ENGAGEMENT AND  
COMMUNICATIONS MANAGER

**Desiree Cull**  
STRATEGY AND PROJECTS LEADER

### Approved by:

**Jessica Ellerm**  
GROUP MANAGER CORPORATE  
SERVICES

**James Palmer**  
CHIEF EXECUTIVE

### Attachment/s

- [1](#) Statement of proposal to establish HoldCo

## Consultation on establishing an additional Council Controlled Organisation

### What is the proposal?

This proposal is to establish a new Council Controlled Organisation (CCO) to provide an efficient and effective structure to facilitate a potential minority share issue of Port of Napier Limited (Napier Port or Port). Hawke's Bay Regional Council (HBRC or Regional Council) seeks feedback on this proposal.

### Background

On 19 December 2018, the Regional Council resolved to progress and further refine the option to offer up to 49 per cent of the shares in Napier Port in an initial public offering (IPO) and a listing of shares on the New Zealand share market operated by NZX Limited (NZX). The Regional Council resolved that the initial sell down must be between 33 per cent and 45 per cent. This further refinement is necessary to support a future Regional Council decision on whether to proceed with this option for Napier Port.

The Regional Council is considering a minority IPO of Napier Port to provide funding for significant investment in the Port. An IPO will release funds for the Port to significantly reduce its debt and enable it to begin to invest in its future. This includes starting construction of an estimated \$142 million new wharf in 2020.

A minority IPO of up to 49 per cent will ensure majority HBRC ownership and control of the Port, enable Napier Port to fund its growth requirements over the next decade and protects ratepayers. It will enable the Regional Council to diversify its investment portfolio and income streams through investing the remaining IPO proceeds into a ring fenced 'future fund' which both protects the capital base and offsets the reduced Port dividend from its investment returns.

The rationale for considering a minority IPO has been well documented in the original consultation document on options for the future of the Port which can be viewed here: <https://www.hbrc.govt.nz/assets/Document-Library/Presentations/Our-Port-Have-your-Say-online.pdf>

Part of designing an IPO transaction is to determine the optimal structure to enable the most efficient offering of shares and the ongoing operation of a publicly-listed company.

On 30 January 2019, the Regional Council decided that, should the IPO transaction be progressed, its preferred option, subject to consultation, is to establish a new and permanent CCO to own all of the shares in Napier Port and to be the listed entity.

For the purposes of this document, the CCO will be named 'HoldCo' (as in 'holding company'). It is likely that, upon its formation, an alternative name would be given to the entity.

### Why are we consulting on this?

The purpose of this consultation is to seek the views of people who will or may be affected by, or have an interest in, the Regional Council establishing HoldCo to own shares in Napier Port and to act as the listed entity for the potential IPO.

HoldCo would only be established if a decision is taken by the Regional Council to proceed with an IPO. If HoldCo was established but the IPO did not complete, HoldCo would never own the Port, and would be wound-up as a consequence.

The Regional Council has already undertaken a comprehensive public consultation process – including public submissions and hearings to inform its 'in principle' decision to progress a minority IPO transaction. However, the Regional Council is required under Section 56 of the Local

Government Act 2002 to undertake a specific consultation before establishing a CCO. The earlier 'Our Port – Have Your Say' consultation document (which sought views on four possible options for the future of Napier Port) foreshadowed the possibility of a CCO being established to manage the transaction:

*"The Regional Council retains the ability to establish the appropriate structures to manage the transaction and the Regional Council's continued ownership position in the Port, such as the possibility of creating new holding entities or corporate structures as required."*

The views of persons who will or may be affected or interested in the Regional Council establishing HoldCo as part of the IPO structure will inform the final decision. Should the Regional Council agree to proceed with an IPO transaction and, as part of that decision, determine to establish HoldCo to be the listed entity (having considered all feedback on the establishment of HoldCo received through this consultation process), HoldCo would be established to own all the shares in Napier Port and be the listed entity.

### Submissions

People wishing to submit on this consultation proposal are invited to do so by 5pm on 1 March 2019. Submissions can be made online ([insert link](#)) or in writing to the Regional Council by completing the submission form on the back page of this proposal.

The Regional Council supports people who want to present their submission in any number of ways, including in any language they choose or via sign language. People who wish to present their views orally by phone or in person should contact Leone Andrews, Executive Assistant to Group Manager Corporate Services, who will manage the arrangements.

Email: [leone.andrews@hbrc.govt.nz](mailto:leone.andrews@hbrc.govt.nz)  
Phone: (06) 833 8010

### What is a CCO?

A CCO is a Council Controlled Organisation.

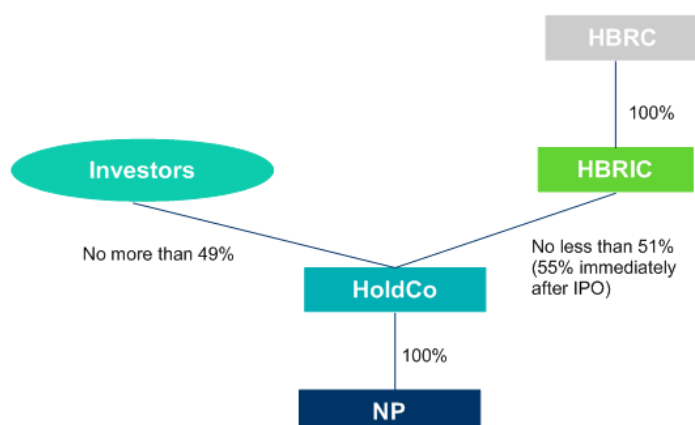
In February 2012, Hawke's Bay Regional Council established the Hawke's Bay Regional Investment Company Ltd (HBRIC Ltd) as a CCO (and a Council Controlled Trading Organisation, as it trades for the purpose of making a profit) to:

- Enhance HBRC's capability to actively manage transferred strategic assets
- Improve net financial and economic returns from these assets
- Provide flexibility of operation not otherwise available directly to HBRC which would increase returns to HBRC from its ongoing financial management.

The Regional Council owns 100 per cent of the shares in HBRIC Ltd and appoints its Board of Directors.

If HoldCo is established, it would own 100 per cent of the shares in Napier Port. It would become the listed entity on the NZX (instead of Napier Port) following an IPO. The Regional Council's interest in HoldCo (which would be no less than 55 per cent immediately following the IPO transaction) would be held by its existing investment holding subsidiary, HBRIC Ltd, rather than by the Regional Council directly. HoldCo would therefore be a subsidiary (but, after any IPO, not a wholly-owned subsidiary) of HBRIC Ltd.

The final preferred structure following the IPO transaction is proposed to be as follows:



#### When would HoldCo be set up?

HoldCo would only be established if a final decision to proceed with the IPO option is made. HoldCo would be established before any IPO commences.

#### Who will control HoldCo?

HoldCo will principally be controlled by its Board of Directors. Those directors will have the responsibility for governance, subject to any specific provisions that HBRIC Ltd imposes in the HoldCo constitution.

The Board of Directors of HoldCo would initially be appointed by HBRIC Ltd (whose directors are appointed by the Regional Council), with those directors expected to be the directors of both HoldCo and Napier Port upon completion of any IPO. HBRIC Ltd (and ultimately the Regional Council through its control of HBRIC Ltd) will have the ability to appoint and remove all directors of HoldCo prior to any IPO completing. From the time that any IPO completes, and provided HBRIC Ltd retains at least 51 per cent of the shares in HoldCo, HBRIC Ltd (and ultimately the Regional Council) will still have the ability to control the appointment and removal of directors of HoldCo. Any such appointment and removal of directors once listing has occurred will need to be undertaken in accordance with the NZX Listing Rules and the constitution of HoldCo. The Regional Council's influence and control as the ultimate majority shareholder of Napier Port would remain the same under the proposed HoldCo structure as it would be if Napier Port were directly listed on NZX and a majority of the shares held by HBRIC Ltd.

#### What is the cost?

The expected cost of establishing the new CCO is approximately \$15,000 (largely related to the preparation of constitutional provisions, company registration and ancillary advice and approvals) and has been budgeted for within the expected cost of the IPO transaction. The wider cost of considering and implementing the preferred structure is included within the overall project budget. The administration and operational activities of HoldCo would be fully funded by HBRIC Ltd until the completion of the IPO. Those activities would then be funded by Napier Port.

#### Why is establishing HoldCo our preferred option?

The Regional Council's view is that the creation of HoldCo to undertake the IPO would be the optimal structure for a successful IPO. There are a number of detailed legal, tax and liability-related considerations in preparing an organisation for an IPO. Creating a holding company is a recognised model as organisations prepare for an IPO that involve both a sale of shares (in this case to raise



money for HBRIC Ltd) and an issue of shares (in this case to raise money for Napier Port). HoldCo would make the IPO process simple and clear for all potential investors.

This option of creating HoldCo is preferred by the Napier Port and HBRIC Ltd Boards and has been supported by the Regional Council, subject to consultation. Based on professional legal and tax advice the preferred option has the following advantages:

***Simplicity and efficiency***

HoldCo is a relatively simple structure to use in the case of the potential IPO. If the Regional Council were not seeking to raise any money for its own purposes by selling shares it holds in Napier Port, the HoldCo structure would not necessarily be considered by the Regional Council. Having a holding company is common practice from a commercial and legal/tax perspective for sizeable business organisations, and does not create material new legal/tax problems or inefficiencies.

***Clear accountability and liability***

The use of HoldCo ensures that primary responsibility for the accuracy of the product disclosure statement (PDS) (being the disclosure document under which the offer of shares in the IPO will be made) sits with HoldCo and its directors (who will also be the directors of Napier Port).

HoldCo would be established as a limited liability company with no financial recourse to the Regional Council. Liability for the Port's compliance and performance would continue to reside with the directors of Napier Port, ensuring liability for the PDS resides in the right place.

***Marketability***

The establishment of HoldCo prior to an IPO is a sensible procedural step that ensures the efficiency and simplicity of an IPO for potential investors. Having two sets of shares being offered under the IPO would make the potential IPO more complex and confusing for investors. This is an unnecessary level of complexity that can be avoided.

***Operational flexibility***

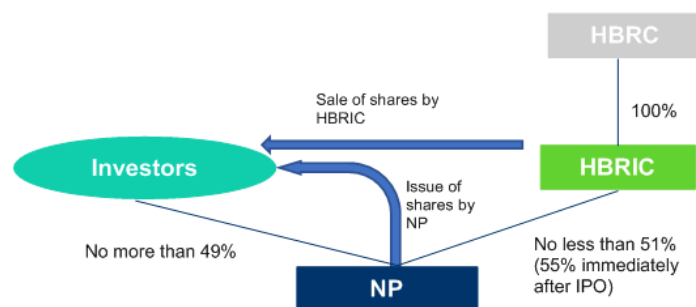
Under a 45 per cent sale of shares in an IPO, HBRIC Ltd would own 55 per cent of the shares in HoldCo. The remainder of the shares would be owned by those who successfully subscribe for shares in the IPO. HoldCo would provide future operating flexibility, such as being able to easily add new entities for operating or investment reasons (as sister companies alongside Napier Port within the listed group), and would add only minor additional legal, tax and accounting compliance costs.

***Are there other options?***

Yes. Other more complex options (such as using a new company to acquire then sell existing Napier Port shares alongside Napier Port) were considered and ultimately rejected based on assessment of liability risk, complexity, the potential to confuse potential investors and on the advice of professional advisors.

The one option that is considered to be a reasonably practicable alternative would be to retain the status quo under which both HBRIC Ltd and Napier Port would separately sell shares to investors in Napier Port and Napier Port would be the company listed on the NZX. This is not the preferred option as it is more complex and therefore less clear for investors than creating HoldCo to act as the listed entity and would involve the Regional Council's investment vehicle, HBRIC Ltd, as an offeror of shares under any IPO.





Under the status quo approach (shown in the diagram above), HBRIC Ltd on behalf of the Regional Council would sell some of its shares in Napier Port and Napier Port would issue new shares. The net proceeds of sale of HBRIC Ltd's shares would be received by HBRIC Ltd (releasing equity to the Regional Council) and the net proceeds of the issue of new shares by Napier Port would be received by Napier Port (which could be used to reduce debt and/or for other means of allowing Napier Port to fund Wharf 6 and future development).

Under this model the directors of HBRIC Ltd and Napier Port would have the same level of shared involvement and liability in the offer of shares, including in relation to the PDS and the post listing compliance of Napier Port with the commitments that are given in the PDS. The Regional Council considers that this potential liability and responsibility should rightly sit with the listed company board (i.e. the Napier Port directors who would also be HoldCo directors) as they are in the best position to ensure that the PDS is accurate and to manage post listing compliance.

Table 1: Summary options analysis - HoldCo vs Status Quo

	HoldCo	Status-quo
Simplicity and efficiency	✓	✗
Clear accountability and liability	✓	✗
Marketability	✓	✗
Operational flexibility	✓	✗
Cost	Similar	Similar
Control	Similar	Similar

#### What is the process from here?

- 18 February 2019 Consultation opens
- 1 March 2019 Consultation closes
- 13 March 2019 (1pm) Set aside for people to present their views in person
- 27 March 2019 Decision made by the Regional Council

## Consultation on establishing an additional Council Controlled Organisation

Feedback must be received by Hawke's Bay Regional Council no later than 5pm on 1 March 2019.

Please give us your feedback in one of the following ways:

- Online at: [hbrc.govt.nz](http://hbrc.govt.nz) (search #HoldCo or #CCO)
- Email: [ourplan@hbrc.govt.nz](mailto:ourplan@hbrc.govt.nz)
- Post to: HoldCo Consultation, c/- Hawke's Bay Regional Council, Private Bag 6006, Napier 4142
- Deliver to: HBRC offices in Napier, Taradale, Waipawa or Wairoa.

### SUBMISSION FORM

#### Contact Details

(Your name and submission will be made available to the public on the Regional Council's website)

Full name: \_\_\_\_\_

Name of organisation (if applicable): \_\_\_\_\_

Address for service: \_\_\_\_\_ Postcode: \_\_\_\_\_

Telephone: \_\_\_\_\_ Mobile: \_\_\_\_\_ Email: \_\_\_\_\_

What do you support about this proposal and why?

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What don't you support about this proposal and why?

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Attach more information (if necessary).

Do you wish to speak to your submission or present your views in person on Wednesday, 13 March 2019?

☐ YES

☐ NO

#### Privacy Act 1993

Submissions are public information. Information on this form including your name and submission will be made available to the media and public as part of the decision-making process. Your submission will only be used for the purpose of this consultation process. The information will be held by Hawke's Bay Regional Council. You have the right to access the information and request its correction.

# HAWKE'S BAY REGIONAL COUNCIL

Wednesday 13 February 2019

Item 5

## SUBJECT:

That the Council excludes the public from this section of the meeting being Confirmation of Public Excluded Minutes Agenda Item 5 with the general subject of the item to be considered while the public is excluded; the reasons for passing the resolution and the specific grounds under Section 48 (1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution being:

GENERAL SUBJECT OF THE ITEM TO BE CONSIDERED	REASON FOR PASSING THIS RESOLUTION	GROUND S UNDER SECTION 48(1) FOR THE PASSING OF THE RESOLUTION
Port Development Project Executive Steering Committee Update	7(2)(b)(ii) That the public conduct of this agenda item would be likely to result in the disclosure of information where the withholding of that information is necessary to protect information which otherwise would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information  7(2)(j) That the public conduct of this agenda item would be likely to result in the disclosure of information where the withholding of the information is necessary to prevent the disclosure or use of official information for improper gain or improper advantage	The Council is specified, in the First Schedule to this Act, as a body to which the Act applies.
Napier Port Director Appointments	7(2)(a) That the public conduct of this agenda item would be likely to result in the disclosure of information where the withholding of the information is necessary to protect the privacy of natural persons	The Council is specified, in the First Schedule to this Act, as a body to which the Act applies.

## Authored by:

**Leeanne Hooper**  
**PRINCIPAL ADVISOR GOVERNANCE**

## Approved by:

**James Palmer**  
**CHIEF EXECUTIVE**