

Report 99.218

28 April 1999

File: CFO/9/1/1

Report to the Policy and Finance Committee
from Greg Schollum, Chief Financial Officer

Size and Composition of Boards of Directors – Council LATEs

1. Purpose

To seek approval from the Committee to suggested changes in the size and composition of the Boards of Directors of Council's 100% owned subsidiary companies.

2. Background

Councillors will recall the sale late last year by the Council of its interest in Port Wellington to Port Investments Limited (a 100% owned subsidiary company of the Council).

Officers signalled at the time of the sale that given the increased responsibility of the Port Investments Limited and WRC Holdings Limited Boards of Directors, it would be appropriate to revisit the size and composition of these Boards (the Council had previously indicated that it considered the issues associated with Boards of Directors should be dealt with by the incoming Council).

A Councillors' workshop was held on 2 February 1999 to explain the background to the change of ownership and to discuss officers' suggestions associated with Boards of Directors of Council's 100% owned companies. Such suggestions incorporated:

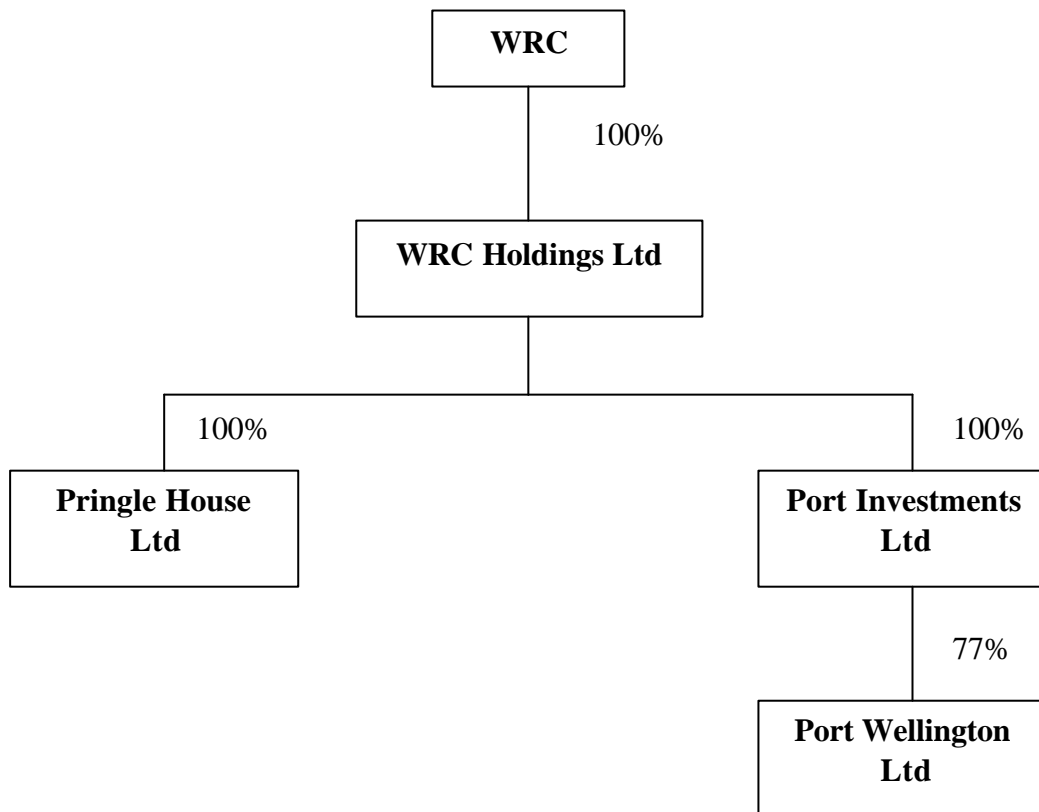
- Board size
- Board composition
- Appointment process
- Directors' Fees

Clearly it may not be appropriate for officers alone to make recommendations on many of these matters. Given some of the sensitivities involved, I have consulted with the Chairman and he has indicated his comfort with the recommendations contained in this report.

The current position is that all 3 companies; WRC Holdings Limited, Pringle House Limited and Port Investments Limited have the same four Directors as follows:

Stuart Macaskill (Council Chairman)
 Euan McQueen (former Council Deputy Chairman)
 Alison Lawson (former Councillor)
 Jim Rowe (former Councillor)

The current company structure is as follows:



3. Board Size

3.1 General Comments

All 3 companies are governed by the requirements of the Companies Act 1993 and the Local Government Act 1974. Although the Companies Act sets no restrictions on the number of Directors, the Local Government Act requires each Local Authority Trading Enterprise (LATE) to have 2 external directors. Therefore the minimum number of directors is 2 and there is no legal maximum.

3.2 **WRC Holdings Limited**

Given the increased responsibility of WRC Holdings Directors, following the restructuring of Council's ownership of Port Wellington, I suggest that the Council should increase the size of the WRC Holdings Board from 4 to 5 to allow Councillor Directors to have the majority say on the Board (given 2 external Directors are required).

The Constitution of WRC Holdings provides that the size of the Board can be between 4 and 7.

3.3 **Pringle House Limited (PHL)**

As there has been no change to the manner in which Pringle House Limited is set up, I see no governance related reason to change the size of the Board from the current 4 Directors. However, as Board Meetings for the 3 companies tend to run together, I see merit in increasing the size of the Board to 5, thereby ensuring commonality of Council's 3 elected members to all companies in the Group.

The Constitution of PHL provides that the size of the Board shall be 4. However this can be increased by a special resolution of shareholders (ie by WRC Holdings Limited).

3.4 **Port Investments Limited (PIL)**

As with WRC Holdings (noted in Section 3.2 above), the Directors of Port Investments Limited now carry Council's direct governance responsibilities over Council's investment in Port Wellington.

As such, an increase in the size of the Board from 4 to 5 is recommended. Such an increase will also provide the Council with the necessary comfort over ultimate control of Port Wellington. The Constitution of PIL provides that the size of the Board shall be between 4 and 5.

4. **Board Composition**

4.1 **General Comments**

As noted in Section 3.1 above, the Local Government Act requires at least two external Directors (external Directors cannot be either elected members of the Council or Council Officers).

4.2 **WRC Holdings Limited**

Given the suggestion in Section 3.2 to increase the size of the Board from 4 to 5, it would follow that the composition of the WRC Holdings Board should be:

External Appointees	2
Elected Council Representatives	<u>3</u>
	5

In terms of the current externally appointed Directors of WRC Holdings Limited, I see no reason to change. Both of the current externally appointed Directors have a very good grasp of the nature of business of WRC Holdings, and perhaps more importantly, a good appreciation of the political environment in which Council (as 100% owned shareholders) operates.

As far as the 3 elected Council representatives go, I believe that 2 of the 3 directorships should be filled by the Council Chairperson and Council Deputy Chairperson, by virtue of their Council position. The remaining directorship could be any of the remaining Councillors. However, as Councillor McQueen is currently a Director and has built up a thorough knowledge of the company's affairs, I see a lot of merit in Councillor McQueen continuing.

I therefore suggest the Board of WRC Holdings should be:

Council Chairperson	Stuart Macaskill
Council Deputy Chairperson	Margaret Shields
Council Representative	Euan McQueen
External Director	Alison Lawson
External Director	Jim Rowe

4.3 **Pringle House (PHL)**

As Pringle House is required to have 2 external Directors, it follows that the composition of the PHL Board should be:

External Appointees	2
Elected Council Representatives	<u>3</u>
	5

Again, I see no reason to change the current externally appointed Directors to PHL. Both Alison Lawson and Jim Rowe have a thorough background knowledge of the Regional Council Centre and Alison Lawson has practical experience of the real estate industry. The reasons noted in Section 4.2 hold equally true for the elected Council representatives.

I therefore suggest the Board of Pringle House should be:

Council Chairperson	Stuart Macaskill
Council Deputy Chairperson	Margaret Shields
Council Representative	Euan McQueen
External Director	Alison Lawson
External Director	Jim Rowe

4.4 **Port Investments Limited (PIL)**

As Port Investments is required to have 2 external Directors, it follows that the composition of the PIL Board should be:

External Appointees	2
Elected Council Representatives	<u>3</u>
	5

In the case of PIL, I suggest that the Council considers some change to the external Director appointments. This is primarily because if the Council is able to appoint an external Director with knowledge of the ports industry, it should add value to the governance able to be exercised by the PIL Board.

I consider that change is needed to only 1 of the 2 externally appointed Director positions. I suggest that Alison Lawson be replaced as a Director of PIL once a Director with ports industry knowledge can be appointed.

Again, the reasoning noted in Section 4.2 holds equally true for the elected Council representatives.

I therefore suggest the Board of Port Investments should be:

Council Chairperson	Stuart Macaskill
Council Deputy Chairperson	Margaret Shields
Council Representative	Euan McQueen
External Director	Jim Rowe
External Director	To be appointed ⁽¹⁾

⁽¹⁾Alison Lawson, until a suitable replacement can be found.

4.5 **Role of Chairman of the Three Companies**

The constitutions of the three companies provide that the Directors of each company appoint the Chairman. However, the constitutions also require the Council's consent. The resolutions within this report provide for the Council Chairman to continue as Chairman of each of the three companies.

5. **Appointment Process**

If the suggestions contained in this report are accepted by the Council, the size of the Boards of Directors for each of the 3 companies will increase by 1 (from 4 to 5).

Given that the Chairman and Councillor McQueen are existing Directors of all 3 companies, the Council will need to resolve that Councillor Shields (as Council Deputy Chairperson) is added as a Director to the Boards of all 3 companies.

In terms of externally appointed Directors, the only change suggested in this report is the appointment of a new external Director to the PIL Board to replace Alison Lawson. I suggest that this appointment is achieved by direct approach ("shoulder tapping") rather than by public advertising.

6. Directors' Fees

6.1 General Comments

The Local Authorities Members' Interests Act imposes some requirements on fee setting (e.g., Councillors who are Directors can't vote on Directors' remuneration issues). To ensure the Council follows a robust process, I intend to seek Council's approval to Directors' fees at a Council meeting after the Council has approved the size, composition and appointments of Directors.

6.2 Elected Council Representatives

Elected Council representatives currently receive Directors' fees at Council's daily allowance rate (except where otherwise remunerated, such as is the case with the Chairman). In this way the Company directorships are currently seen as the same as Committee memberships.

6.3 External Appointees

Currently external Directors also receive daily allowances at the same rate as the elected Council representatives.

I consider that the external Directors should be paid what are considered to be market rates and therefore intend to recommend change to the way in which external appointees are remunerated. (I do not intend to recommend change to the remuneration of Councillor Directors).

I have enquired of other Councils in the Wellington region into the range of fees paid to Directors of LATE's. The Wellington City Council and Hutt City Council pay Directors' fees based on an assessment of market value (eg information supplied by the Institute of Directors) whereas Porirua and Upper Hutt do not have any LATE's.

Based on the Institute of Directors' survey results, the indicative annual Directors' fees relating to Council's 3 companies would be approximately \$3,000 - \$5,000 per external Director, per company (depending on the expected number of meetings per year).

Once the Council has considered the issues of size, composition and appointment process as contained in this report, I will seek advice from the Institute of Directors as to precise \$ amounts for each company, before seeking formal Council approval of Directors' fees for the 1999/00 year.

7. Recommendations

- (1) *That the report be received and the contents noted.*
- (2) *That the Committee recommend to the Council that it approve the following Board sizes/composition for each of Council's 100% owned subsidiaries:*

WRC Holdings Limited

- *Stuart Macaskill (Company Chairman)*
- *Margaret Shields*
- *Euan McQueen*
- *Jim Rowe*
- *Alison Lawson*

Pringle House Limited

- *Stuart Macaskill (Company Chairman)*
- *Margaret Shields*
- *Euan McQueen*
- *Jim Rowe*
- *Alison Lawson*

Port Investments Limited

- *Stuart Macaskill (Company Chairman)*
- *Margaret Shields*
- *Euan McQueen*
- *Jim Rowe*
- *New appointee (Alison Lawson to continue to act until a suitable replacement is found)*

(3) *That the Committee recommend to Council that it:*

- note that the Directors of WRC Holdings Limited will need to pass a special resolution to amend the Constitution of Pringle House Limited, increasing the size of the Board from a minimum and maximum of 4, to a minimum of 4 and a maximum of 5;*
- authorise the Chief Financial Officer to provide the Directors of WRC Holdings Limited with Council's consent to the constitutional amendment.*

(4) *That the Committee recommend to Council that it:*

- authorise the Chairman to identify a shortlist of suitable external candidates for the position of Director of Port Investments Limited; and*
- note that the Chairman will seek Council approval of the preferred candidate prior to the appointment being made.*

- (5) *That the Committee note that the Chairman will report back to a future meeting of the Policy and Finance Committee in respect of Directors' fees for the 1999/00 year once the advice of the Institute of Directors has been received.*

GREG SCHOLLUM
Chief Financial Officer