

**Memorandum of Understanding between NRC and MMH relating to Selection,  
Nomination, and Remuneration of Directors of MMH**

- A.** This MOU is the Memorandum of Understanding referred to in paragraph 3.1.1 of the Board Nomination Committee Charter of MMH.
- B.** Its purpose is to provide a process for the identification of the best available persons suitable for nomination to be directors of MMH, that complies with the legal and best practice obligations applying to each party, and to provide a methodology to assist determine the appropriate remuneration pool for the directors of MMH.
- C.** This MOU should be read together with section 57<sup>1</sup> of the LGA, and the required policy of NRC that addresses both appointment and remuneration matters.
- D.** NRC holds 53.61 % of the shares in MMH, and they are, by law<sup>2</sup>, strategic assets of NRC. As a practical matter the port is a critical asset for the region, and due to their value, the shares are a major asset and source of income for NRC.<sup>2</sup>
- E.** As well as its statutory purposes and roles, NRC has a specific statutory duty to: “manage its ... assets ... investments ... prudently and in a manner that promotes the current and future interests of the community”<sup>3</sup>.
- F.** MMH is a port company within the meaning of that Act, and in this context, the following provisions are relevant:
- (a) **Section 5:** The principal objective of MMH is to operate as a successful business;
  - (b) **Section 6(l)(a):** There must be no fewer than 6 directors;
  - (c) **Section 6(l)(b):** No more than 2 members or employees of NRC (or any other shareholding local authority) may be directors of MMH<sup>4</sup>;
  - (d) **Section 6(2):** The directors are to be persons who, in the opinion of those appointing them will assist MMH to achieve its principal objective; and
  - (e) **Section 6(3):** All decisions relating to the operation of MMH must be made by, or pursuant to, the authority of the directors (so the distinctions between ownership, governance and management can, and must, be maintained).
- G.** As a listed company MMH is bound by the NZX Listing Rules, and in this context Section 2 is particularly relevant. Also relevant is the NZX Corporate Governance Code; see Principles 2 and 5. The Code contains significant recommendations:
- (a) **Recommendation 2.1:** The board should have a charter. MMH has a charter; see especially clause 6;
  - (b) **Recommendation 2.2:** MMH should have a process for nomination and appointment of directors, and a skills matrix is suggested. MMH has a Board Nomination Committee Charter and a skills matrix;<sup>5</sup> and

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<sup>1</sup> See Appendix 1.

<sup>2</sup> "Strategic assets" are defined in section 5(1) LGA; see also sections 93E and 97(1)(b).

<sup>3</sup> Section 101(1) LGA.

<sup>4</sup> For many years, no NRC member or employee has been a director of MMH.

<sup>5</sup> See Appendix 2.

- (c) **Recommendation 2.5:** MMH should have a diversity policy. MMH has a diversity policy.
  - (d) **Recommendation 5.1:** The Board should recommend director remuneration to shareholders in a transparent manner. Actual remuneration should be clearly disclosed in the annual report. This MOU sets out the process and timing for remuneration processes, and individual director remuneration is clearly disclosed in the annual report.
- H. The Code is not legally binding on MMH but it does embody best practice.
  - I. None of the laws or codes translate into direct involvement by NRC in the governance or management of MMH.
  - J. The governance of MMH is in the hands of its directors who, in turn, owe duties to MMH, and to its stakeholders; including NRC as majority shareholder and representative of the people of the region and their diverse interests.
  - K. The parties agree that it is in each of their interests that the directors are the best people available to govern MMH. NRC has a policy on the appointment of directors of council organisations, including MMH<sup>6</sup>. That policy is required by law<sup>7</sup> to comprise an objective and transparent process to identify what is required, who should be appointed, and how they should be remunerated.
  - L. The parties agree that it is important that the selection, nomination, and remuneration processes for directors recognise the various obligations of the parties and operate in an efficient and effective way.

NRC and MMH therefore agree that:

#### **Selection and Nomination of Directors**

1. The Board Nomination Committee (**BNC**) established under the Board Nomination Charter<sup>8</sup> will be the initial process for identification, and ranking, of director candidates (including candidates for reappointment) identified by MMH.
2. MMH will not amend that Charter without first consulting NRC, and MMH will not adopt or implement any policy that is contrary to or inconsistent with the policy adopted by NRC and set out at Appendix 3.
3. As a general principle, upcoming vacancies arising from required director rotation will be advertised.
4. Advertising of upcoming vacancies is the responsibility of NRC as required by its section 57 policy but the parties may agree to that being done jointly and co-branded. The fact that a current director is seeking reappointment must be kept confidential by the parties, unless the person concerned requests otherwise.
5. NRC will establish a committee<sup>9</sup> (**the committee**) comprising 3 NRC councillors or council appointees and 2 MMH Board members or appointees of the Board; to be chaired by an NRC appointee. If the Board of MMH has resolved that it supports the nomination of any current directors, then the current directors must still go through the committee process.

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6 See Appendix 3; **Policy on the appointment of directors to council organisations.**

7 Section 57(l) LGA (full text at Appendix 1).

8 See Appendix 4.

9 See LGA, Schedule 7, clauses 30 and 31.

6. The committee will not have decision making powers, but its roles are:
  - 6.1 to consider the recommendations of the BNC.
  - 6.2 to interview candidates to the extent that it considers that to be appropriate.
  - 6.3 to report its recommendations to NRC and advise MMH, as to the person or persons it considers NRC should nominate for appointment as a director or directors at the AGM of MMH. The report must include a full list of applicants and be provided to the CEO of the NRC in sufficient time<sup>10</sup> so that the NRC can decide whether or not to agree with the recommendations.
7. The outcome of the director selection process will be a recommendation of director candidates, including their rankings, based on the application of the matrix<sup>11</sup> and the section 57 policy in the context of the candidates and the continuing directors.
8. MMH (through BNC) is responsible for ensuring compliance with the relevant NZX Listing Rules; specifically Rule 2.3.2(a) which specifies that the closing date for nominations (by shareholders such as NRC) must be within (and not earlier than) 2 months before the AGM of MMH.
9. NRC acknowledges that it will have to identify and notify to MMH the person or persons it proposes to nominate for appointment as a director, or directors, in time for MMH to include the relevant information in the notice to all shareholders of the AGM.<sup>12</sup>
10. In the event that NRC proposes not to implement the recommendations of the committee, or NRC proposes not to nominate a current director who is seeking reappointment, the Chair of NRC will notify the Chair of MMH, and enter into good faith discussions, if required.
11. The parties acknowledge that at law any shareholder is entitled to nominate a person for appointment as a director. Where either party becomes aware of the likelihood of that happening, it will inform the other. NRC will not support a nomination that has not been assessed and evaluated under this MoU without first engaging with the BNC or the full Board of MMH.
12. This MOU does not apply to the appointment by the Board of an additional director as contemplated by clause 7.5 of the MMH Constitution; but bearing in mind that the person is likely to be a director candidate at the next AGM, the Board recognises the desirability of following as much of this MoU as is appropriate, and consultation with NRC.

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<sup>10</sup> For example, if the AGM of MMH is in early November, the notification to the CEO of the NRC should be no later than the end of August.

<sup>11</sup> See Appendix 4.

<sup>12</sup> 10 working days before the AGM is the minimum; see clause 6.5(a) MMH Constitution. For an AGM in early November, that date would be mid-October.

## Remuneration

13. The remuneration of directors of MMH will be in the form of a pool to be allocated at the discretion of the directors.
14. The directors have discretion to appoint committees as they consider appropriate but (with the exception of the Audit and Risk (or Risk and Assurance) Committee), there should be no expectations that NRC would agree to the remuneration pool being increased to allow for further remuneration of directors who are chairs or members of Board committees.
15. The remuneration pool is fixed for three years at a time but must be voted on at an AGM of MMH.
16. NRC notes that Rule 2.11.3 of the NZX Listing Rules allows for the Board to increase remuneration if the number of directors increase. Conversely, NRC will require a reduction of the remuneration pool on the same basis at the next AGM after the number of directors reduces, unless the number of directors is to be increased at that AGM.
17. MMH shall commission one or more analysts' reports to assist NRC in determining an appropriate remuneration pool for directors it will support. The cost of those reports must be met by MMH. The analysts' report(s) shall evaluate, as a minimum, the following factors:
  - 17.1 Peer comparison: a representative peer group of organisations for comparative data shall be established, peer group to be based on organisations of similar size and scope to MMH, with peer group comparison to assess revenue, market capitalisation, assets, number of staff relative to director remuneration.
  - 17.2 The number of Board meetings held compared to the median of the sample for FY20.
  - 17.3 Current market movements and trends for non-executive director fees.
  - 17.4 Positioning versus the comparator group: MMH's revenue, market capitalisation, assets and number of staff.
  - 17.5 MMH's committee structure and consideration of any associated additional director workload.
  - 17.6 MMH's relationship to Northport, consideration of the revenue derived from by MMH Northport as a component of MMH revenue.
  - 17.7 The relevance, if any, of the MMH directors appointed as directors to Northport and the remuneration of these Directors by Northport.
  - 17.8 The section 57 policy of NRC, while taking into account both the expectations of public service on office holders of council organisations, and the responsibilities of directors of NZX listed companies.
  - 17.9 The performance of MMH, both absolutely and in comparison with its peers of equivalent size and complexity, including changes in shareholder value and equity; the extent to which increases in each are attributable to the actions of the directors or other causes, and where there have been

decreases the extent to which these have been contributed to, or minimised, by the actions of the directors.

17.10 Any identified circumstances that are reasonably likely to increase demands on the time and expertise of the directors in either of the three years.

18. The analysts' report(s) may take into account other factors, (including any anticipated difficulty in attracting new directors or retaining current directors) but these must be specified in the report recommendations.
19. NRC will provide MMH confirmation of the size of the remuneration pool it will support within two months of receiving the analysts' report, so that MMH can thereafter issue a notice to shareholders with ordinary resolution of the remuneration pool.
20. NRC does not intend to appoint any person as an executive director, and MMH acknowledges that NRC expects that MMH will not pay remuneration to any director in any capacity other than as a director.

#### **General**

21. There is no direct sanction for non-compliance with this MOU, but each party recognises the desirability of compliance, and the risks of non-compliance.
22. Nothing in this MOU restricts NRC from discussing any related matter with any other shareholder of MMH.
23. This MOU is a public document. It will be published on NRC's website and drawn to the attention of potential candidates for nomination as a director of MMH together with NRC's section 57 policy.
24. MMH will rearrange its committees in its discretion to ensure compliance with this MOU.
25. This MOU continues in force until the Chair of either party gives written notice of its termination to the Chair of the other party. Similarly this MOU may be amended by agreement of the parties, signed by the Chair of each party.

Signed on behalf of NRC

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Chair

\_\_\_\_\_  
Date

Signed on behalf of MMH

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Chair

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Date