

Consultation on establishing an additional Council Controlled Organisation

February 2019

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).

For the purposes of this document, the proposed CCO will be named 'HoldCo' - as in 'holding company'. HoldCo is a placeholder name for use during the consultation period. Upon its formation a name that more appropriately relates to Napier Port would be given to the CCO, for example it could be named Port of Napier Holdings Limited, or similar.

The proposed CCO would be the single entity that sells shares in Napier Port and would be governed by the same directors as Napier Port, who would be accountable for the performance of the listed company.

This proposal describes the key advantages of the HoldCo structure compared to the status quo, summarised below.

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

Hawke's Bay Regional Council (HBRC or Regional Council) seeks feedback on this proposal.

People wishing to submit on this consultation proposal are invited to do so by 5pm on 11 March 2019. Submissions can be made [online](#) or in writing to the Regional Council by completing the submission form on the back page of 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.

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 will ensure majority Regional Council ownership and control of the Port, enable Napier Port to fund its growth requirements over the next decade and protects ratepayers from the costs. 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.

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, 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 11 March 2019. Submissions can be made [online](#) 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

Phone: (06) 833 8010

What is a CCO?

A CCO is a Council Controlled Organisation.

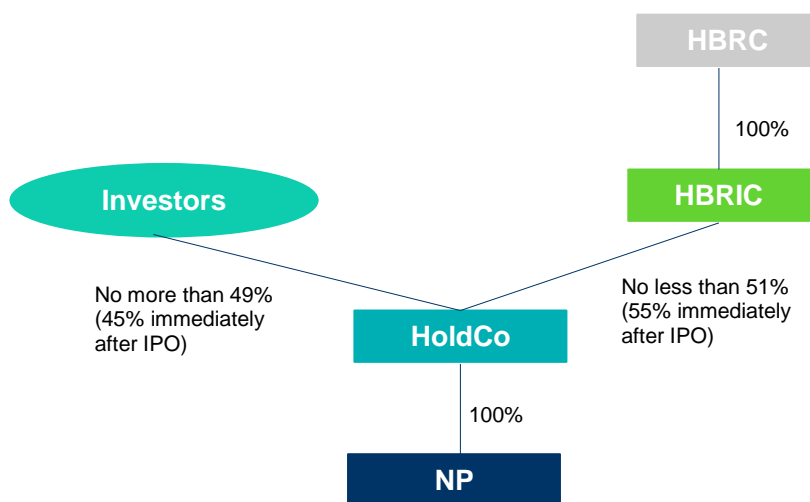
In February 2012, Hawke's Bay Regional Council established Hawke's Bay Regional Investment Company Ltd (HBRIC Ltd) as a CCO (and a Council Controlled Trading Organisation, as it trades for the purpose of making a profit) to:

- 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?

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 the status quo.

HoldCo will 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, which are permitted under the NZX Listing Rules.

The Board of Directors of HoldCo would initially be appointed by HBRIC Ltd (whose directors are appointed by the Regional Council), with those HoldCo 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) would have the ability to appoint and remove all directors of HoldCo prior to any IPO completing. Any appointment or removal of directors once listing has occurred would need to be undertaken in accordance with the NZX Listing Rules and the constitution of HoldCo.

In summary, the Regional Council cannot 'direct' the Port Board currently, and will not be able to do so under the proposed HoldCo structure.

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 also seeking to release equity and diversify its assets 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***

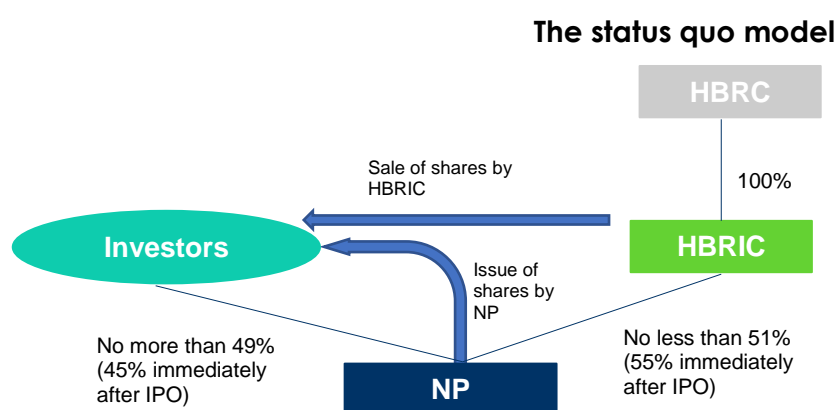
Under a 45 per cent sale of shares in an IPO, HBRIC Ltd would own 55 per cent of the shares in HoldCo. The remainder of the shares would be owned by those who successfully subscribe

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 and 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.

What is the process from here?

- 15 February 2019 Consultation opens
- 11 March 2019 Consultation closes
- 20 March 2019 Set aside for people to present their views in person
- 27 March 2019 Decision made by the Regional Council

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Feedback must be received by Hawke's Bay Regional Council by 5pm on 11 March 2019.

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

- Online Form at: hbrc.govt.nz search: [#CCO](#)
- Email: ourplan@hbrc.govt.nz
- Post to: CCO 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: _____ Postcode: _____

Telephone: _____ Mobile: _____ Email: _____

What do you support about this proposal and why?

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

Attach more information (if necessary).

Do you wish to speak to your submission on Wednesday, 20 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.