Ref: [redacted]

Civic House, 110 Trafalgar Street
PO Box 645, Nelson 7040, New Zealand

P (03) 546 0200

E LGOIMA@ncc.govt.nz
nelson.govt.nz

26 July 2024

[redacted]

Dear [redacted]

OFFICIAL INFORMATION REQUEST FOR SHAREHOLDERS' AGREEMENT FOR INFRASTRUCTURE HOLDINGS LIMITED AND GOVERNANCE AND APPOINTMENTS COMMITTEE

I refer to your official information request dated 28/06/2024 requesting the below:

"Could I please have a copy of the operative Shareholders' Agreement for Infrastructure Holdings Ltd, between IHL, TDC and NCC? Could you please also advise who sits on IHL's Governance and Appointments Committee."

The information you requested is enclosed.

The Governance and Appointments Committee is referenced in section 13 of the Shareholders Agreement and currently consists of the Mayors of Nelson City Council and Tasman District Council and the Chair of Infrastructure Holdings Limited.

You have the right to seek an investigation and review by the Ombudsman of this response. Information about how to make a complaint is available at www.ombudsman.parliament.nz or Freephone 0800 802 602.

If you wish to discuss this decision with us, please feel free to contact Nikki Harrison, Group Manager Corporate Services.

Yours sincerely,

Nikki Harrison

Group Manager Corporate Services

Encl: Shareholders' Agreement for Infrastructure Holdings Limited

Internal Document ID: [redacted]

Shareholders' Agreement for Infrastructure Holdings Limited

between

Tasman District Council

and

Nelson City Council

and

Infrastructure Holdings Limited

Shareholders' Agreement for Infrastructure Holdings Limited

Date: 1 July 2023

Parties

Tasman District Council (TDC)

Nelson City Council (NCC)

Infrastructure Holdings Limited (the **Company**)

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1. Interpretation and definitions

Definitions

1.1 In this agreement, unless the context otherwise requires:

Accession Deed	means an accession deed entered into by any Additional Shareholder in a form satisfactory to all of the Parties pursuant to which the Additional Shareholder agrees to observe, perform and be bound by this agreement;
Act	means the Companies Act 1993;
Additional Shareholder	means any person who becomes a Shareholder after the date of this agreement, as permitted by this agreement and the Constitution;
Agreement for Sale and Purchase	means the agreement for sale and purchase of all the ordinary shares in Nelson Airport Limited and Port Nelson Limited between TDC and NCC (as vendors) and the Company (as purchaser) dated on or about the date of this agreement;
Board	means the Directors acting together as the board of directors of the Company;
Business	means holding and administering investments in entities in which the Shareholders have a substantial interest for the benefit of the Nelson and Tasman regions and securing funding for and providing funding to the same;
Constitution	means the constitution of the Company as adopted or amended from time to time;

Council-Controlled Trading Organisation	has the meaning given to it in the Constitution;
Director	means a person appointed as director of the Company in accordance with the terms of the Constitution, this agreement and the Act;
Effective Date	means the date of this agreement;
Equity	means shares in the case of a company, and partnership interest (as defined in the Limited Partnerships Act 2008) in the case of a limited partnership;
Financial Year	means: (a) the period from the Effective Date to 30 June immediately following the Effective Date; (b) each subsequent period commencing on 1 July and ending on the next 30 June during the Term; and (c) the period from 1 July immediately preceding the end of the Term, to the end of the Term, however, if there is a change of balance date, all references in this definition to 30 June will be deemed to be varied to the new balance date and all references to 1 July will be deemed to be varied to the day after that new balance date.
Governance and Appointments Committee	means the Governance and Appointments Committee described in clause 13;
Independent	has the meaning given in the Constitution;
Local Government Acts	has the meaning given to it in the Constitution;
Nelson Airport Shares	has the meaning given to that term in the Agreement for Sale and Purchase;
Party	means, as the context requires, any one or all of the Parties to this agreement and (on execution of an Accession Deed) any Additional Shareholder;
Port Nelson Shares	has the meaning given to that term in the Agreement for Sale and Purchase;

Purchase Price	has the meaning given to that term in the Agreement for Sale and Purchase;
Settlement	has the meaning given to that term in the Agreement for Sale and Purchase;
Share	means any share in the Company;
Shareholder	means a person for the time being registered in the Company's Share register as the holder of one or more Shares;
Statement of Intent	has the meaning given to it in the Constitution, and where the context requires, means the most recent Statement of Intent;
Subsidiary	means any company or limited partnership in which the Company holds a majority of the Equity;
Term	has the meaning given in clause 14.1;
Unanimous Resolution	means a resolution that is approved by all of the votes of those Shareholders entitled to vote and voting on the relevant matter; and
Working Day	means any day other than a Saturday, Sunday, or statutory public holiday in Nelson, New Zealand. A Working Day is deemed to commence at 9.00 am and end at 5.00 pm.

Interpretation

1.2 In this agreement, unless the context otherwise requires:

(a) A reference to a person includes any other entity or association recognised by law and vice versa.

(b) Words referring to the singular include the plural and vice versa.

(c) The word including and other similar words do not imply any limitation.

(d) Any reference to a Party includes its successors or permitted assigns or both.

(e) Where a Party is made up of more than one person, the liability of each of those persons is joint and several.

(f) Words importing any gender will include all other genders.

(g) Clause headings are for reference only.

(h) References to clauses and schedules are references to clauses of, and schedules to, this agreement.

(i) Reference to any document includes reference to that document as amended, novated, supplemented, or replaced from time to time.

(j) References to money will be New Zealand currency, unless specified otherwise.

(k) Expressions referring to **writing** will be construed as including references to words printed, typewritten, or otherwise visibly represented, copied, or reproduced (including by electronic mail).

(l) References to statutory provisions will be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time.

2. Objectives of the Company

2.1 The Shareholders intend to carry on the Business in the name of the Company and must at all times during the Term:

(a) as the Company is a Council-Controlled Trading Organisation, comply with the Local Government Acts;

(b) use their reasonable endeavours to co-operate with each other to ensure the efficient operation of the Business; and

(c) carry on the Business and procure that any Director appointed by that Shareholder carries on the Business, in compliance with all laws.

2.2 Unless this agreement is varied by Unanimous Resolution, the Company may not engage in any business or activity which is not the Business or reasonably incidental to the Business.

3. Share subscriptions

Initial Issue

3.1 On incorporation, the Company issued 84,460 ordinary Shares to the Shareholders and agreed with the Shareholders that the consideration in respect of the issuance of such shares would be paid in accordance with the terms set out in clause 3.5:

Shareholder	Number of Shares	Issue Price	Subscription Amount
Tasman District Council	42,230	$100	$4,223,000
Nelson City Council	42,230	$100	$4,223,000

3.2 Immediately following the Effective Date, the Company will issue and the Shareholders will subscribe for a further 3,709,540 ordinary Shares for the consideration and to the Shareholders in the proportions set out below, with such consideration to be paid in accordance with the terms set out in clause 3.5:

Shareholder	Number of Shares	Issue Price	Subscription Amount
Tasman District Council	1,854,770	$100	$185,477,000

Nelson City Council	1,854,770	$100	$185,477,000

General

3.3 The Shares issued pursuant to clauses 3.1 and 3.2 of this agreement will, on fulfilment by each Shareholder of their respective obligations to pay the Subscription Amounts recorded opposite their respective names in the tables contained in clauses 3.1 and 3.2 of this agreement, be credited as fully paid up.

3.4 In consideration of the Shareholders subscribing for the Shares in the Company in accordance with this agreement, the Company makes the following warranties, representations and undertakings to the Shareholders:

(a) the Shares have been or will be (as applicable) issued to each Shareholder free and clear of any encumbrance, charge or other claim by a third party; and

(b) all requirements of the Act and the Constitution have been, or will be, complied with on a timely basis in relation to the issue of the Shares and the execution of this agreement and the allotment and issue of the Shares have been authorised by all necessary corporate and other acts and do not violate any trust deed, instrument, agreement or other arrangement to which the Company is party.

3.5 On the date of Settlement:

(a) each Shareholder must pay the Subscription Amounts recorded opposite their respective names in the tables contained in clauses 3.1 and 3.2 in full to the Company; and

(b) the Company must pay the Purchase Price in full to the Shareholders in accordance with the Agreement for Sale and Purchase.

3.6 The parties agree that the amount payable by each Shareholder pursuant to clause 3.5(a) will be set off against the amount payable by the Company pursuant to clause 3.5(b), with the intent that on the date of Settlement, the consideration paid for the Shares issued under this agreement will be applied in full payment of the Purchase Price on a cashless basis.

4. Inconsistency with other documents

4.1 If there is a conflict or inconsistency between this agreement and the Constitution or any other document between the Parties or any of them, this agreement will prevail to the extent of that inconsistency.

4.2 To give effect to clause 4.1, if any Shareholder gives notice to the other Shareholders, the Shareholders will:

(a) do all such things and sign all such documents necessary to alter the Constitution or any other document between the Shareholders or any of them to remove any inconsistency or conflict; and

(b) pass a Unanimous Resolution (as the case may require) to approve and ratify any and all past acts of the Board, the Company or the Shareholders done in accordance with this agreement, which might otherwise be invalid as a result of any conflict or inconsistency with the Constitution.

5. Directors

5.1 Directors (including an Independent chairperson) are to be appointed in accordance with clauses 12.1 to 12.14 of the Constitution.

5.2 Directors are to be remunerated in accordance with clause 12.22 of the Constitution.

5.3 Any appointment of a director of a Subsidiary, and any remuneration of any such director, is to be made by the Board who must ensure that such remuneration is not inconsistent with any current Shareholders' joint directors remuneration policy.

5.4 The Company will:

(a) indemnify each Director; and

(b) effect insurance,

in accordance with any part or all of section 162 of the Act. The Shareholders will take all reasonable steps to cause the Board to do this.

6. Key Decisions

The Board must not, and must not cause the Company to do any of the following, unless first approved in writing by Unanimous Resolution:

(a) enter into any "major transaction" as defined in the Act;

(b) make any material disposal of assets which are not budgeted for and/or provided for in the Statement of Intent in the relevant Financial Year (or any series of related disposals which, if considered together, would be material); or

(c) engage in any business or activity which is not the Business or reasonably incidental to the Business; or

(d) undertake any capital raising or external debt financing or refinancing that is not in accordance with the Company's corporate treasury structure policies or existing lending and/or borrowing agreements; or

(e) enter into, terminate or grant a waiver of rights under, or material amendment to, any contract in relation to a transaction with a Shareholder or a Subsidiary which has not been included in an approved budget, Statement of Intent or otherwise previously approved; or

(f) grant any security interest over the assets of the Company, other than in the ordinary course of business or as permitted by the Company's policies regarding the granting of security interests and/or the Company's existing lending and/or borrowing agreements; or

(g) appoint an administrator or take a step to liquidate, dissolve or wind up the Company; or

(h) make any decision to undertake an initial public offering; or

(i) make any alteration to, or revocation of, the Constitution or the adoption of a new constitution for the Company; or

(j) issue, cancel, buy-back or make any reduction of Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares; or

(k) transfer any Shares held by the Company or purchase or otherwise acquire its own Shares; or

(l) approve any transfer of Shares by any Shareholder; or

(m) give financial assistance for the purposes of, or in connection with, the purchase of Shares; or

(n) consolidate, divide or subdivide any Shares or create, alter or cancel any rights attaching to Shares; or

(o) apply any amounts available for distribution in paying up Shares or other securities; or

(p) exercise the right to issue shares in lieu of dividends conferred by section 54 of the Act; or

(q) make any amendment to this agreement not expressly contemplated by the provisions of this agreement; or

(r) create, acquire or sell any Subsidiary.

7. Loans and guarantees

No Shareholder will be required to:

(a) make any loans to the Company; or

(b) guarantee the obligations of the Company to a creditor,

except with the express agreement of that Shareholder and then only in accordance with all applicable laws.

8. Dividends

The dividend policy of the Company must be included in each annual Statement of Intent and accordingly approved by Unanimous Resolution.

9. Additional Shareholders

9.1 Shares may only be transferred in accordance with the Constitution.

9.2 Before a person becomes an Additional Shareholder, they must execute an Accession Deed.

9.3 The Board will refuse to approve a transfer of Shares if this clause is not complied with.

10. Grant of security over Shares

A Shareholder may not mortgage or pledge as security its Shares to any person without obtaining the prior written consent of all other Shareholders.

11. Provision of information

11.1 The Company must comply with the reporting obligations of Council-Controlled Trading Organisations in accordance with the Local Government Act 2002, including producing an annual Statement of Intent and the publication of required reports.

11.2 The Parties agree that they will ensure that:

(a) each Subsidiary complies with any applicable reporting obligations under the Local Government Act 2002, the Port Companies Act 1988 and any other relevant legislation; and

(b) prior to incorporation of any Subsidiary, the Parties will agree the timing and content of regular reporting to be provided by the Subsidiary to the Company.

12. Confidentiality

12.1 Subject to clause 12.2, each Shareholder will keep confidential, and make no disclosure of:

(a) the contents of this agreement;

(b) all information obtained from the other Shareholder under this agreement or in the course of negotiations in respect of this agreement; and

(c) all information obtained from the Company, or developed or held for the purposes of the Company,

(together, **Confidential Information**).

12.2 Confidential Information may be disclosed if:

(a) disclosure is required by law, or is necessary to comply with the listing rules of any recognised stock exchange; or

(b) that Confidential Information already is, or becomes, public knowledge other than as a result of a breach of this clause by that Shareholder; or

(c) disclosure is made to an officer, employee, agent, contractor, financier, lawyer, accountant, or other professional adviser for that Shareholder on a need-to-know basis and such person is advised of the confidentiality obligations under this clause and reasonable security measures are put in place to safeguard the Confidential Information; or

(d) disclosure is authorised in writing by the other Shareholders and then only on the terms, if any, specified in such written authority.

12.3 If any Shareholder is permitted by this agreement and by law to make a disclosure or announcement under the preceding clause, before doing so they must:

(a) give to the other Shareholder the maximum notice reasonably practicable in the circumstances, specifying the requirement under which it is required to disclose Confidential Information, and the precise Confidential Information which it is required to disclose;

(b) comply with all reasonable directions by the other Shareholders to contest or resist the requirement to disclose Confidential Information; and

(c) consult in good faith with the other Shareholders with a view to agreeing on the form and timing of the disclosure.

12.4 The provisions of this clause will survive the termination or expiration of this agreement.

13. Governance and Appointments Committee

13.1 The Company will have a Governance and Appointments Committee to recommend to the Board the appointments for which the Company is responsible, including the appointment of directors to any Subsidiary.

13.2 The Governance and Appointments Committee will have three members.

13.3 Nelson City Council is entitled to appoint one member to the Governance and Appointments Committee at any time and may likewise remove and/or replace that member at any time, in each case by notice in writing to the Company signed by a duly authorised officer of Nelson City Council.

13.4 Tasman District Council is entitled to appoint one member to the Governance and Appointments Committee at any time and may likewise remove and/or replace that member at any time, in each case by notice in writing to the Company signed by a duly authorised officer of Tasman District Council.

13.5 The Board shall be entitled to appoint, remove and replace one member to the Governance and Appointments Committee at any time but that member must not be a director of the Subsidiary for whom the appointment is being made.

13.6 Each member of the Governance and Appointments Committee holds office until his or her resignation, retirement, disqualification or removal in accordance with this agreement.

13.7 The Governance and Appointments Committee will elect one of their number to be chairperson.

13.8 A quorum for a meeting of the Governance and Appointments Committee will be three members (including the member appointed in accordance with each of clauses 13.3 and 13.4) present in person or by means of audio, or audio and visual, communication. The members must all be able to simultaneously hear each other throughout the meeting.

13.9 To avoid doubt, no decision or recommendation to the Board may be made by the Governance and Appointments Committee at any meeting where a quorum is not present.

13.10 Except as otherwise provided in this agreement, the Governance and Appointments Committee may regulate its procedure and meetings as it considers fit.

14. Term

14.1 The term of this agreement (**Term**) will commence on the Effective Date and continue until it is terminated on the earlier of the date on which:

(a) the Shareholders unanimously agree in writing to terminate this agreement;

(b) the Company is liquidated in accordance with this agreement or the Act; or

(c) one Shareholder owns all of the Shares.

In the case of any Shareholder, it will also cease to apply in respect of that Shareholder when that Shareholder ceases to hold (whether beneficially or legally) any Shares. However, that Shareholder will remain liable to fulfil its obligations under this agreement or under any legislation prior to its ceasing to hold any Shares.

14.2 Termination of this agreement will not affect the rights and obligations of the Parties which are intended to survive the termination of this agreement. Such termination will be without prejudice to, and will not be deemed a waiver of any claims which any Party may have against any other Party in respect of any breach or other failure to comply with any provision of this agreement prior to the date of termination.

15. Dispute resolution

15.1 If any Party has any dispute (**Dispute**) with any other Party in connection with this agreement:

(a) that Party will promptly give full written particulars of the Dispute to the others; and

(b) the Parties will promptly meet together and in good faith try to resolve the Dispute.

15.2 If the Dispute is not resolved within 20 Working Days of written particulars being given (or any longer period agreed to by the Parties), the Dispute will be referred to mediation by either Party giving written notice of such referral to mediation to the other.

15.3 Until mediation ceases, neither Party may commence arbitration or legal proceedings.

15.4 The mediation procedure is:

(a) the Party who wishes to resolve a Dispute must give a notice of Dispute to the other Party;

(b) the notice must state that the Dispute has arisen, and state the matters in dispute;

(c) when the notice has been given the Parties will appoint a mediator. If they fail to appoint a mediator within 10 Working Days, on request by either Party, the mediator will be appointed by the President of the New Zealand Law Society or the President's nominee;

(d) the Parties must co-operate with the mediator in an effort to resolve the Dispute;

(e) if the Dispute is settled, the Parties must sign a copy of the terms of the settlement;

(f) if the Dispute is not settled within 20 Working Days after the mediator has been appointed, or within any extended time that the Parties agree to in writing, the mediation must cease; and

(g) the Company will pay the mediator's fee and costs including travel, room hire, refreshments.

15.5 The terms of settlement bind the Parties and override the terms of this agreement if there is any conflict.

15.6 The terms of settlement may not be used as evidence in any mediation, arbitration or legal proceedings except with the prior written approval of all Parties.

15.7 Written statements given to the mediator or to one another, and any discussions between them or between them and the mediator during the mediation are not admissible by the recipient in any arbitration or legal proceedings.

15.8 This clause will not apply to an application by either Party seeking urgent interlocutory relief from any court.

15.9 Pending resolution of any Dispute the Parties will perform this agreement in all respects including performance of the matter which is the subject of dispute.

15.10 Either Party may commence arbitration when the mediation procedure ceases by giving written notice to the other Party.

15.11 The arbitration will be conducted by one arbitrator appointed by the Parties. If they cannot agree on an arbitrator within 10 Working Days, on request by either Party, the appointment will be made by the President of the New Zealand Law Society or the President's nominee.

15.12 The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.

15.13 Neither Party will unreasonably delay the dispute resolution procedures in this clause.

15.14 This clause does not apply to:

(a) any dispute arising in connection with any attempted renegotiation of this agreement; or

(b) an application by either Party for urgent interlocutory relief.

16. General provisions

Exclusion of implied relationships

16.1 Nothing contained in this agreement will be deemed or construed to constitute any Party a partner, agent, or representative of any other Party, or to create any trust, and this agreement must not be construed as giving to any Party any of the rights or subjecting any Party to any of the liabilities incidental to a partnership, agency, representative or trust relationship. No Party may make any warranties or representations or incur any obligation on behalf of any other Party.

Costs

16.2 The Parties will ensure that the Company pays the legal costs of the Parties associated with the preparation and negotiation of this agreement and all related ancillary documents.

Assignment

16.3 Except as provided elsewhere in this agreement, no Party may assign, transfer or novate any of that Party’s rights or obligations under this agreement.

Entire agreement

16.4 This agreement constitutes the entire agreement between the Parties as to its subject. It supersedes and cancels any previous agreement, understanding, or arrangement whether written or oral. The Parties agree that it is fair and reasonable that this clause is conclusive between them, as required by section 50 of the Contract and Commercial Law Act 2017.

Further assurance

16.5 Each Party will execute all documents and do all other acts and things which are both reasonable and necessary to carry out its obligations under, and the intention of, this agreement.

Severance

16.6 If any provision of this agreement is held to be unenforceable, illegal or invalid by any court or tribunal:

(a) the rest of this agreement will remain in full force and effect;

(b) the Parties will co-operate to ensure that the spirit and intention of this agreement is carried out as far as is reasonably possible; and

(c) the Parties will, if necessary, amend this agreement accordingly.

Waiver

16.7 None of the provisions of this agreement will be considered to have been waived by a Party except when such waiver is given in writing.

16.8 No delay or omission of any Party in exercising any right, power, privilege or remedy (each, a **Right**) under this agreement will operate to impair such Right or be construed as a waiver of such Right. Any single or partial exercise of any such Right will not preclude any other future exercise of such Right or the exercise of any other Right.

16.9 No waiver by a Party of any breach will be deemed a waiver of any continuing or recurring breach unless it is expressly agreed in writing to be so by that Party.

Notices

16.10 Any notice or other communication (**Notice**) given under this agreement must be in writing.

16.11 A notice may be served personally or sent to the relevant Party's following communication points:

Tasman District Council	Address: 189 Queen Street, Richmond Representative: Mike Drummond, Group Manager-Finance Email: Mike.Drummond@tasman.govt.nz
Nelson City Council	Address: 110 Trafalgar Street, Nelson Representative: Nikki Harrison, Group Manager Corporate Services Email: nikki.harrison@ncc.govt.nz
Company	Address: 8 Vickerman Street, Port Nelson, Nelson Representative: Daryl Wehner, Chief Financial Officer, Port Nelson Limited Email: daryl.wehner@portnelson.co.nz

16.12 Each Party will notify the other in writing of any changes to the communication points.

16.13 Notices are deemed served at these times when:

(a) given personally, on delivery; or

(b) sent by email, as evidenced by the sender's sent email history, unless another party can prove it was not received.

16.14 Any notice served on a Saturday, Sunday or public holiday is deemed served on the first Working Day after that day.

16.15 If the Party is a company or limited partnership, the notice may be given to a director of that Party or a director of the general partner of that Party or the Representative named above, if any.

16.16 Time is of the essence.

Governing law and jurisdiction

16.17 This agreement is governed by and construed according to the laws of New Zealand and the Parties submit to the exclusive jurisdiction of the courts of that jurisdiction in respect of any dispute or proceeding arising out of this agreement.

Counterparts

16.18 This agreement may be executed by each signatory in separate counterpart copies, whether originals, photocopies, or electronic copies. When each signatory has executed at least one copy, the separately signed documents when brought together will form a binding legal document.

Signed by

Signed by **Tasman District Council** by its duly authorised officer in the presence of:

Signature of witness

Evelyn Marie Callander

Name of witness

Lawyer

Occupation

Richmond

Address

Janine Dowding, Chief Executive Officer

Signed by **Nelson City Council** by its duly authorised officer in the presence of:

Signature of witness

Andrea Houston

Name of witness

Executive Assistant

Occupation

110 Trafalgar St

Address

Nigel Philpott, Chief Executive

Signed by **Infrastructure Holdings Limited** as the Company:

Director's signature

Director's full name

Director's signature

Director's full name

Signed by

Signed by **Tasman District Council** by its duly authorised officer in the presence of:

Janine Dowding, Chief Executive Officer

Signature of witness

Name of witness

Occupation

Address

Signed by **Nelson City Council** by its duly authorised officer in the presence of:

Nigel Philpott, Chief Executive

Signature of witness

Name of witness

Occupation

Address

Signed by **Infrastructure Holdings Limited** as the Company:

Director's signature

PAUL ALAN ZEALAND

Director's full name

Director's signature

SUSAN JANE SHELDON

Director's full name