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Principals and Consultants do not share Partners' liabilities for the firm.

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28 October 1999

Ted Maguire
Company Secretary
Port Investments Limited
PO Box 11 646
WELLINGTON

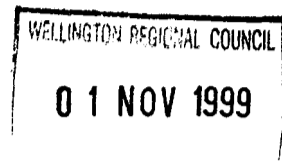
Dear Mr Maguire

LEGAL CAPACITY OF PORT INVESTMENTS LIMITED

- 1 You have asked us for our opinion on whether Port Investments Limited ("the Company") may lawfully make a contribution to the Wider Wellington Olympics Trade Focus Group ("WWOTFG") for an economic development proposal relating to the Sydney Olympic Games.
- 2 You have advised us that the Wellington Regional Council ("the Council") has received advice from Simpson Grierson and Oakley Moran that the Council cannot, under the Local Government Act 1974 or other legislation, fund an economic development initiative such as that proposed by WWOTFG.

Conclusion

- 3 In our opinion, the Company cannot lawfully make a contribution to WWOTFG for an economic development proposal relating to the Sydney Olympic Games. Our reasons are summarised below.



FILE No.	E/21211	
TO NOTE	INIT	DATE
E. Maguire	EM	
PVD	PVD	
TO ACTION		

Also with offices in Auckland and Christchurch

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Price Waterhouse Centre, 119 Armagh St., PO Box 2510, Christchurch. Telephone 64-3-353 4130. Facsimile 64-3-365 4587. DX WP21035.

Capacity of Port Investments Limited

- 4 The Company is incorporated under the Companies Act 1993 and as such, pursuant to section 16 of that act (but subject to that act, any other enactment and the general law), has full capacity to carry on or undertake any business activity, do any act, or enter into any transaction. Our opinion is that the capacity of the Company is limited by the general law.
- 5 As a matter of general law, in our opinion the Council does not have the power to do through a subsidiary those things that it does not have the power to do itself. The Local Government Act 1974 would be undermined if it could be circumvented simply by the Council acting through a subsidiary company (other than in relation to those matters clearly envisaged by the scheme of that act in relation to local authority trading enterprises). On policy grounds a court would have little difficulty implying a restriction on the capacity of a company owned and controlled by the Council to the effect that the capacity of the company could not exceed the capacity of the Council in such circumstances.
- 6 There is New Zealand case law which supports the view that a company owned and controlled by a local authority cannot do those things which the local authority cannot do. In that case (*Takapuna City and Waitemata County v Auckland Regional Authority* [1972] NZLR 705) it was held that a local authority did not have the power to acquire shares in a company which had powers and objects clearly broader than those of the local authority. The corollary to the *Takapuna* case is that the legal capacity of a company acquired by a local authority must be such that the company may be lawfully acquired by the local authority. Therefore, a company lawfully acquired by a local authority would not have the power to do things that the local authority itself could not do. Although there is some debate among lawyers as to whether that case would be followed today, it still provides the only precedent for the particular issue which you are currently considering.
- 7 Our conclusion is, therefore, that if that Council cannot lawfully make a contribution to WWOTFG for an economic development proposal relating to the Sydney Olympic Games, the Company cannot lawfully make such a contribution either.

Other factors to consider

- 8 Legal issues are also likely to arise in relation to directors duties (including acting in the best interests of the Company and exercising powers for a proper purpose) and the Company receiving fair value. Therefore, from a legal perspective, even if the Company has the legal capacity to make a contribution to WWOTFG for an

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LEGAL CAPACITY OF PORT INVESTMENTS LIMITED

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economic development proposal relating to the Sydney Olympic Games, it may not be appropriate for the Company and/or its directors to allow it to do so.

- 9 If you would like us to provide you with a fuller analysis of issues that may arise we would be happy to do so.
- 10 Please contact us if you have any queries or if you would like to discuss any of the matters referred to in this letter.

Yours faithfully



Peter Nielsen

Solicitor