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Committee Policy, Finance and Strategy and Council
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WRC Holdings Group Directorships - End of the Triennium

1. Purpose

For the Committee to consider the effect of certain clauses of the constitutions of the WRC Holdings Group of Companies (“the Group”), and to recommend necessary amendments to ensure that the new Council has sufficient time to properly consider the composition of the company boards following the 2004 triennial election.

2. Background

2.1 Clause 25.5 of the company constitutions

The Group is comprised of WRC Holdings Ltd (“WRC Holdings”), Pringle House Limited (PHL) and Port Investments Limited (PIL). For the purpose of this report, the constitutions of these companies are referred to collectively as “the constitutions”. Except where the constitutions refer directly to a company name – for example, in the respective definitions of “the Company” in each constitution - they are the same.

Clause 25.5 of the constitutions, states that the office of director is vacated if the person holding that office:

As a Shareholder Representative, ceases to be a member or employee of a Shareholding Local Authority

“Shareholder Representative” is defined in the constitutions to mean a director who is a member or employee of a shareholding Local Authority. At present, there are three Shareholder Representatives on the company boards, they are Councillors Shields, McDavitt and Long.

The effect of clause 25.5 of the constitutions is that as soon as any Councillor who is a director ceases to be a Councillor they automatically cease to be a director as well.

2.2 Quorum

Clause 7 of the constitutions provides that the quorum necessary for the transaction of business at a meeting of any Board is:

- *A majority of Directors; and*
- *Not less than half of such majority must comprise Shareholder Representatives.*

In effect, this requires that at least two Shareholder Representatives and one other director be present at any meeting in order for there to be a quorum.

2.3 Local Electoral Act

Section 115 of the Local Electoral Act 2001 (“the Act”) provides that:

- A candidate at a triennial election who is declared to be elected before polling day comes into office on polling day (9 October 2004 in the case of this year’s election).
- In any other case, a candidate at any election comes into office on the day after the day on which the candidate is declared to be elected (approximately 14 October in the case of this year’s election).

Section 116 of the Act provides that every member vacates office when the members elected at the next election come into office.

Legal advice considered by officers suggests that the effect of these sections when read together is to create a vacation of office *irrespective of whether a member is subsequently re-elected, or declared to be elected before polling day and continues in office.*

Where a member continues in office following an election, the vacation is of a technical rather than real or practical nature. Nevertheless, when clause 25.5 of the constitutions is considered in this context, all of the Shareholder Representatives will cease to be members – even if only in a strict legal sense - and therefore will vacate their office as directors shortly after the forthcoming election.

3. Comment

In anticipation of the 2001 triennial election, Council resolved to amend the constitution of WRC Holdings to extend the directorships of named directors until 28 February 2002 to allow sufficient time for the new Council to consider the composition of the company boards.

The Council noted that the boards of PHL and PIL would resolve to amend the constitutions of their respective companies in the same way, which the boards subsequently did.

While the resolutions passed in 2001 ensured continuity following that election, they did not resolve the problem outlined above for future elections. It is therefore recommended that Council, as sole shareholder, amend the constitution of WRC Holdings Ltd by way of special resolution in the following way:

- amending the definition of “Shareholder Representative” so that it reads “Shareholder Representative means a Director who, at the time of appointment as such a Director, is a member or employee of a Shareholding Local Authority.”
- inserting a new clause 20.3 which reads “A Shareholder Representative remains in office as a Director from the time of appointment as a Director until, and vacates office as a Director on, 31 December in the year in which an election of members of the appointing Shareholding Local Authority is held, unless the Shareholder Representative has earlier vacated office in accordance with clause 25.”
- deleting clause 25.4, and replacing it with the following clause 25.5 “is removed from or otherwise vacates office in accordance with this constitution or the Act.”
- deleting clause 25.5 and replacing it with the following new clause 25.4: “as a Shareholder Representative, receives notice from the Shareholding Local Authority terminating the appointment as a Director; or”.

Clause 25 would then read:

“The office of Director is vacated if the person holding that office:

25.1 dies; or

25.2 becomes disqualified from being a director pursuant to the Act;
or

25.3 resigns that office in accordance with this constitution; or

25.4 as a Shareholder Representative, receives notice from the Shareholding Local Authority terminating the appointment as a Director; or

25.5 is removed from or otherwise vacates office in accordance with this constitution or the Act.”

The board of WRC Holdings Ltd would, as sole shareholder, need to amend the respective constitutions of PHL and PIL in the same way. The suggested changes provide a one-fix amendment to the constitutions to address continuity of directorships post election. If passed, Council will not need to address this issue again in future.

4. Communication

Amendments to the respective constitutions of WRC Holdings, PHL and PIL will be registered with the Companies Office.

5. Recommendation

That the Committee recommend to Council that:

- (1) As sole shareholder of WRC Holdings Limited (“WRC Holdings”), resolve as a special resolution that the constitution of WRC Holdings be amended by:
 - a) amending the definition of “Shareholder Representative” so that it reads “Shareholder Representative means a Director who, at the time of appointment as such a Director, is a member or employee of a Shareholding Local Authority.”; and*
 - b) by inserting a new clause 20.3 which reads “A Shareholder Representative remains in office as a Director from the time of appointment as a Director until, and vacates office as a Director on, 31 December in the year in which an election of members of the appointing Shareholding Local Authority is held, unless the Shareholder Representative has earlier vacated office in accordance with clause 25.”; and*
 - c) by deleting clause 25.4, and replacing it with the following clause 25.5 “is removed from or otherwise vacates office in accordance with this constitution or the Act.”*
 - d) deleting clause 25.5 and replacing it with the following new clause 25.4: “as a Shareholder Representative, receives notice from the Shareholding Local Authority terminating the appointment as a Director; or”.**
- (2) Note that WRC Holdings, as sole shareholder of Pringle House Limited (PHL) and Port Investments Limited (PIL) will resolve as a special resolution to amend the respective constitutions of PHL and PIL in the same way as (1) above.*
- (3) Note that the amendments to the constitutions of WRC Holdings, PHL and PIL will be registered with the Companies Office.*

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