

PORT OF AUCKLAND VOTING AGREEMENT

This agreement is made on 24 February 2025

PARTIES

Northland Regional Council (NRC)

Port of Tauranga Limited (POT)

Ngāpuhi Investment Fund Limited (Tupu Tonu)

(each a *Consortium Member* and together the *Consortium*)

Port of Auckland Limited (POA)

BACKGROUND

- A The Consortium has entered into a scheme implementation agreement in substantially the form previously provided to POA (*SIA*) with Marsden Maritime Holdings Limited (*MMH*) on or before the date of this agreement under which the Consortium and MMH agreed to implement a scheme of arrangement under Part 15 of the Companies Act 1993 involving the acquisition by the Consortium of all of the shares in MMH that NRC does not already hold or control (the *Scheme*).
- B As at the date of this agreement, POA holds or controls 8,218,829 ordinary shares in MMH (*Sale Shares*).
- C This agreement sets out the terms and conditions on which POA has agreed to vote in favour of the Scheme.

IT IS AGREED

1 DEFINED TERMS AND INTERPRETATION

1.1 Defined terms

In this agreement, unless the context requires otherwise:

Associate has the meaning given in Rule 4 of the Takeovers Code.

Consideration means a price of NZ\$5.60 per Share payable in cash on the Implementation Date.

Control means, in relation to a person (the relevant person) and one or more other persons, where those one or more persons, directly or indirectly, whether by the legal or beneficial ownership of shares, securities or other equity, the possession of voting power, by contract, trust, or otherwise:

- (a) has the power to appoint or remove the majority of the members of the governing body of the relevant person;

- (b) controls or has the power to control the affairs or policies of the relevant person;
or
- (c) is in a position to derive more than 50% of the economic benefit of the existence or activities of the relevant person.

Court means the High Court of New Zealand.

Effective has the meaning given to it in the SIA.

Exemption Notice means the Takeovers Code (Voting Agreements for Schemes of Arrangement) Exemption Notice 2020.

Implementation Date has the same meaning as given to that term in the SIA.

MMH Shareholder means each person who is registered as the holder of a Share from time to time.

NZX means NZX Limited and, where the context requires, the NZX Main Board financial product market that it operates.

Related Party means, in relation to POA, Auckland Council.

Sale Shares means the Shares described in Background recital B.

Scheme has the meaning given to it in Background recital A.

Scheme Meeting means any meeting of MMH Shareholders for the purposes of section 236A(2)(a) of the Companies Act ordered by the Court to be convened under section 236(2)(b) of the Companies Act (and includes any adjourned meeting).

Scheme Plan has the meaning given to that term in the SIA.

Scheme Shareholder has the meaning given to that term in the SIA.

Share means a fully paid ordinary share in MMH.

SIA has the meaning given to it in Background recital A.

Specified Shares means:

- (a) the Sale Shares held or controlled by POA as at the date of this agreement; and
- (b) in relation to clauses 2 and 4.2 only, also includes:
 - (i) Voting Rights in respect of Shares and any rights relating to the exercise of any voting power acquired under any swap, derivative arrangement, synthetic transaction or other contractual right or interest, in each case held or controlled on or after the date of this agreement; and
 - (ii) any other Shares which POA acquires or gains control over after the date of this agreement.

Takeovers Code means the Takeovers Code set out in the schedule to the Takeovers Regulations 2000.

Voting Rights has the meaning given in Rule 3 of the Takeovers Code.

1.2 **Interpretation**

In this agreement, unless the context otherwise requires or as specifically otherwise stated:

- (a) references to dates and times are to dates and times in New Zealand;
- (b) references to currency are to New Zealand currency;
- (c) headings are for convenience only and do not affect interpretation;
- (d) a reference to a statute or other law is a reference to a New Zealand statute or other law and includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (e) a reference to "including" means "including but not limited to" and "include" and "includes" have corresponding meanings.

2 **VOTING IF CONSIDERATION IS IN INDEPENDENT ADVISER'S REPORT RANGE**

POA agrees that if the Scheme is proposed by MMH to MMH Shareholders, then, as long as the Consideration is within or above the valuation range of the independent adviser appointed by MMH, it will vote, or will procure that the chairman of MMH is appointed as proxy in respect of the Specified Shares and that the chairman is directed to vote, all of the Specified Shares in favour of the resolution to be put to MMH Shareholders at the Scheme Meeting to approve or otherwise facilitate the Scheme.

3 **NO DISPOSALS**

POA agrees that prior to the termination of this agreement it will not:

- (a) dispose of, or agree to dispose of, or encumber any of the Specified Shares (or any interest in them), other than to the Consortium under the Scheme or any alternative transaction promoted by the Consortium (or a related party of the Consortium) under the SIA;
- (b) dispose of, agree to dispose of or otherwise part with ownership, control or any Voting Rights in respect of Specified Shares; or
- (c) except as required by clause 2, fetter its right to vote any of the Specified Shares.

4 **WARRANTIES AND ACKNOWLEDGEMENTS**

4.1 **Mutual warranties**

Each party warrants to the other that:

- (a) it has the legal right, authority and full power to enter into this agreement and to perform its obligations under it;

- (b) it has taken all necessary corporate and other action to authorise the execution, delivery and performance of this agreement; and
- (c) this agreement constitutes valid and binding obligations enforceable against it in accordance with its terms.

4.2 **POA warranties**

POA warrants to the Consortium that, as at the date of this agreement:

- (a) it holds or controls the Sale Shares;
- (b) it controls and has the right to exercise, or control the exercise of, the votes in relation to all of the Sale Shares;
- (c) it controls the disposal of all of the Sale Shares;
- (d) the only Voting Rights that it holds or controls in MMH are those in respect of the Sale Shares. and
- (e) it is able to assess the risks and implications of entering into this agreement and has had an opportunity to obtain independent legal advice in relation to this agreement.

4.3 **Acknowledgements**

The parties acknowledge that:

- (a) this agreement has been concluded on commercial, arm's length terms;
- (b) the Consortium and POA are not acting jointly or in concert and nothing in this agreement is intended to make them Associates;
- (c) other than as set out in this agreement, there are no ongoing covenants between the Consortium and POA;
- (d) this is the sole legal agreement or understanding between the Consortium and POA; and
- (e) the legal relationship between the Consortium and POA contemplated by this agreement will cease on the implementation of the Scheme or termination of the SIA.
- (f) neither POA nor its related companies (including, for this purpose, North Tugz Limited), nor any of their respective employees, advisers or agents, give any warranty or representation as to the accuracy, adequacy, completeness or materiality of any information provided to the Consortium or MMH (or their related parties and advisors), including any information in relation to North Tugz Limited, and shall have no liability for any such information.

4.4 **Substantial product holder notice**

The Consortium acknowledges that, as soon as practicable after the parties sign this agreement, the Consortium must provide a substantial product holder notice to NZX disclosing that it has a relevant interest in all Specified Shares as a result of this agreement.

5 COMPLIANCE WITH EXEMPTION NOTICE

It is acknowledged and agreed that:

- (a) the Consortium does not, under this agreement, become the controller of the Voting Rights attaching to the Shares in any way other than in respect of the voting commitment contained in clause 2 of this agreement;
- (b) the voting commitment under this agreement relates to the scheme of arrangement that is proposed under the SIA;
- (c) the Consortium is required to, as soon as is reasonably practicable but, in any event, within one working day after this agreement is entered into, provide certain information about this agreement to the Takeovers Panel and MMH; and
- (d) if the Consortium becomes aware that any information sent under clause (c) has changed, the Consortium is required to, as soon as is reasonably practicable but, in any event, within one working day after becoming aware of the change, send notice of the change to the Takeovers Panel and MMH.

6 CONSORTIUM UNDERTAKING

6.1 Consortium undertaking

The Consortium confirms to POA that, at the time of the entry into this agreement by all parties, the SIA and Scheme Plan contemplate that in respect of the Sale Shares and any additional Shares comprising Specified Shares, POA will, subject to the implementation of the Scheme, receive the Consideration.

6.2 Reliance by POA

The Consortium acknowledges and agrees that POA is entering into this agreement in reliance upon the Consortium's undertaking in clause 6.1.

7 TERMINATION

7.1 Automatic termination

This agreement will automatically terminate on the earlier of:

- (a) the date on which the resolution to approve the Scheme is declared by MMH as having been passed at the Scheme Meeting by the requisite thresholds ordered by the Court under orders applicable to the Scheme Meeting; and
- (b) the date on which the SIA is terminated in accordance with its terms, with effect from the time of such termination.

7.2 Termination by Consortium

If required (in the reasonable opinion of the Consortium) in order for the Scheme to become Effective, the Consortium may terminate this agreement at any time by written notice to POA.

7.3 POA termination

POA may terminate this agreement by written notice to the Consortium if:

- (a) the SIA or the Scheme Plan in the form attached to the SIA is amended or varied; or
- (b) any rights or obligations under the SIA or the Scheme Plan in the form attached to the SIA are waived by the Consortium,

and the result of such amendment, variation or waiver:

- (c) is to reduce the Consideration;
- (d) is to change the form of the Consideration payable to Scheme Shareholders;
- (e) is to defer payment of all or part of the Consideration to Scheme Shareholders to a date which is after the Implementation Date;
- (f) is to impose additional conditionality on the Scheme which materially adversely affects the benefit of the Scheme for the Scheme Shareholders as a whole; or
- (g) otherwise materially adversely affects the benefit of the Scheme for the Scheme Shareholders as a whole,

where POA's prior written consent (acting reasonably) has not been obtained to such amendment, variation or waiver.

7.4 **Effect of termination**

If this agreement is terminated under clauses 7.1, 7.2 or 7.3:

- (a) except for this clause 7.4, this agreement has no further force and effect; and
- (b) the parties will otherwise be released from their obligations under this agreement and no party will have any claim against any other party arising under or in connection with such termination except in respect of any breach occurring before termination.

8 GENERAL

8.1 **Notices**

- (a) Each notice or other communication under this agreement is to be made in writing and sent by personal delivery or electronically to the addressee at the address or email address, and marked for the attention of the person or office holder, from time to time designated for the purpose by the addressee to the other parties. The initial address, email address and relevant person or office holder of each party is set out in clause 8.1(c) of this agreement.
- (b) Without limiting any other means by which a party may be able to prove that a notice has been received by another party, a notice will be deemed to be duly received:
 - (i) if sent by hand when left at the address of the recipient; or
 - (ii) if sent by email, on the date and time at which it enters the addressee's information system unless a delivery failure notice has been received by the sender, in which case the notice will be deemed not to have been served,

but if a notice is served by hand, or is received by the recipient on a day which is not a business day, or after 5.00 pm on a business day (recipient's local time), the notice is deemed to be duly received by the recipient at 9.00 am on the first business day after that day.

(c) The initial address details of each party are as set out below:

(i) **POA:**

Address: Port of Auckland Building, Sunderland Street, Auckland 1010,
New Zealand

Email: roger.gray@poal.co.nz

Attention: Roger Gray, Chief Executive Officer

with a copy (which does not constitute notice) to:

Address: Russell McVeagh, Level 30, Vero Centre, 48 Shortland Street,
Auckland 1010

Email: ian.beaumont@russellmcveagh.com

Attention: Ian Beaumont

(ii) the **Consortium:**

Address: Project Takutai Unincorporated Joint Venture, c/o BDO
Auckland, BDO Centre Level 4, Building A/4 Graham Street,
Auckland CBD, Auckland 1010

Email: jong@nrc.govt.nz; leonard.sampson@port-tauranga.co.nz;
tom.woods@tuputonu.co.nz

Attention: Jonathan Gibbard / Leonard Sampson / Tom Woods

with a copy (which does not constitute notice) to:

Address: Chapman Tripp, Level 34 PwC Tower, 15 Customs Street
West, Auckland CBD, Auckland 1010

Email: roger.wallis@chapmantripp.com

Attention: Roger Wallis

8.2 **Compliance with applicable laws**

Nothing in this agreement requires any party to do any act, matter or thing in contravention of the Takeovers Code (except as permitted by the Exemption Notice), the Exemption Notice or the conditions attaching thereto, the Financial Markets Conduct Act 2013 or the Companies Act 1993.

8.3 **Variation and waiver**

(a) This agreement may only be varied in writing signed by the parties.

- (b) No waiver of any breach, or failure to enforce any provision, of this agreement at any time by the Consortium or POA will in any way affect, limit or waive that party's right thereafter to enforce and compel strict compliance with the provisions of this agreement.

8.4 No assignment

No party will, directly or indirectly, assign, transfer or otherwise dispose of any rights or interests of that party in, or obligations or liabilities under, this agreement.

8.5 Costs

The parties will each bear their own costs and expenses incurred in connection with the preparation, negotiation and implementation of this agreement and any documentation pertaining hereto.

8.6 Severability

If any part of this agreement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination will not impair the enforceability of the remaining parts of this agreement, which will remain in full force, and such provision will be deemed to be modified to the extent necessary to render it legal, valid and enforceable.

8.7 Entire agreement

This agreement constitutes the entire agreement and understanding (express and implied) between the parties relating to the subject matter of this agreement and supersedes and cancels all previous agreements and understandings between the parties relating thereto, whether written or oral.

8.8 Counterparts

This agreement may be executed in two or more counterparts (including electronic copies), each of which is deemed an original and all of which together constitute one and the same agreement. This agreement will be effective upon the exchange by electronic means of executed counterparts. The parties consent to the use of DocuSign or other method of electronic signature as a method to execute this agreement or any document or notice relating to this agreement.

8.9 Governing law

This agreement shall be governed by, and construed in accordance with, New Zealand law, and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

8.10 Amendment

No:

- (a) amendment to this Agreement;
- (b) agreement between the parties for the purpose of, or referred to in, this Agreement;
- (c) request, consent, or approval for the purposes of, or referred to in, this Agreement;

is effective unless it is in writing and signed by the parties.

EXECUTION

Executed as an agreement.

Northland Regional Council by:



Jonathan Gibbard, Chief Executive Officer

Port of Tauranga Limited by:

Leonard Sampson, Chief Executive Officer

Ngāpuhi Investment Fund Limited
by:

Tom Woods, Chief Investment Officer

Port of Auckland Limited by:

Roger Gray, Chief Executive Officer


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Leonard Sampson, Chief Executive Officer

Ngāpuhi Investment Fund Limited
by:

Tom Woods, Chief Investment Officer

Port of Auckland Limited by:

Roger Gray, Chief Executive Officer

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Northland Regional Council by:

Port of Tauranga Limited by:

Jonathan Gibbard, Chief Executive Officer

Leonard Sampson, Chief Executive Officer

Ngāpuhi Investment Fund Limited
by:

Port of Auckland Limited by:



Kelly Dunn, Acting Chief Executive Officer

Roger Gray, Chief Executive Officer

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Northland Regional Council by:

Port of Tauranga Limited by:

Jonathan Gibbard, Chief Executive Officer

Leonard Sampson, Chief Executive Officer

Ngāpuhi Investment Fund Limited
by:

Port of Auckland Limited by:

Tom Woods, Chief Investment Officer



Roger Gray, Chief Executive Officer