

Report 12.193
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Committee Council
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Transfer of Council rail assets to Greater Wellington Rail Limited and approval to issue of new shares

1. Purpose

To seek approval by Council to the transfer of land based rail assets (excluding land) currently owned by Greater Wellington Regional Council (**Council**) to Greater Wellington Rail Limited (**GWRL**) with the acquisition by GWRL being funded by the issue of new shares.

2. The decision-making process and significance

The matters requiring decision in this report have been considered by officers against the requirements of Part 6 of the Local Government Act 2002 (**Act**). Part 6 of the Act sets out the obligations of local authorities in relation to the making of decisions.

2.1 Significance of the decision

Part 6 requires Council to consider the significance of the decision. The term 'significance' has a statutory definition set out in the Act.

Officers have considered the significance of the matter, taking the Council's significance policy and decision-making guidelines into account. Officers recommend that the matter be considered to have low significance. This is because the decisions sought will have no financial impact on ratepayers and no adverse service impact on the users of the regional rail service.

Officers do not consider that a formal record outlining consideration of the decision-making process is required in this instance.

3. Background

In order to implement the Government's metro rail operating model and to prepare for the possible contestability of rail operating and maintenance

contracts, it has been necessary to consolidate all metro rolling stock¹ and land based assets² under the ownership and control of GWRL.

In June 2011 (refer report 11.304) it was resolved that Council:

- e) *Agrees to Council accepting the Regional Rail Package and entering in to the Asset Transfer Agreement as summarised in the Officers' report.*
- f) *Agrees to delegate to the Chief Executive authority to approve and execute the proposed Asset Transfer Agreement and such other documents necessary to give effect to the Agreement, on behalf of Council and give Council's approval to WRC Holdings Limited and Greater Wellington Rail Limited for the transfer of assets from KiwiRail to Greater Wellington Rail Limited, subject to:*
 - i. *The consideration paid to KiwiRail being no more than \$1;*
 - ii. *The Chief Executive agreeing to the final form of the agreement for sale and purchase between KiwiRail and Greater Wellington Rail Limited;*
 - iii. *The Chief Executive being satisfied as to the due diligence on the proposed transaction currently being undertaken by Council officers.*

Since that time GWRL (with Council approval) has given effect to this decision by acquiring:

- ownership of the Ganz Mavag and EE fleets including spare parts from KiwiRail
- ownership of the EMU depot building, wheel lathe building, station buildings, platform improvements, and car park improvements from KiwiRail, and
- leasehold tenure (85 years) of the KiwiRail land on which all these buildings and improvements rest.

Ownership and land tenure rights in these assets are held by GWRL, a wholly owned subsidiary of WRC Holdings Ltd (**WRCHL**). GWRL was originally established in August 2006 to own the Matangi, SW and SE fleets.

There are a number of land-based rail assets that were acquired by Council before GWRL was established, and which remain owned by Council. These include:

- station, platform and car park improvements as described in the agreement for sale and purchase at Attachment 2 of this report (**Assets**), and

¹ Except locomotives that haul the Wairarapa services

² Except Wellington Station which is transferring to the Tenth Trust as part of its Treaty settlements.

- land used or intended to be used for rail commuter car parking at Heretaunga, Tawa, Paraparaumu, Lindale and Raumati (**Car Park Land**).

In addition Council is party to leases or licences of car park land owned by TLAs, and NZTA, and to MOUs regarding maintenance of seal and other improvements on that land.

4. **Comment**

Ideally all of Council's rail assets would be consolidated within GWRL. However practical implications and transaction costs mitigate against the transfer of some of these assets. After considering legal advice it is now proposed that:

- the station, platform and car park improvements (**Assets**) owned by Council be transferred to GWRL
- the Car Park Land should not be transferred to GWRL, but should remain in Council ownership , and
- no leases or licences are established between Council and GWRL in relation to the Car Park Land at this time.

Each of these proposals is discussed below.

4.1 **Transfer of station, platform and car park improvements currently owned by Council**

The Assets mainly comprise seats, signs, security cameras, and buildings.

The most significant in value are station buildings at Waterloo Interchange and Petone, and car park improvements at Waterloo, Petone, Paraparaumu and Pomare.

The Assets had a September 2011 book value of \$5.6 million. The book value of the Assets at 30 June 2012 is \$5.3 million.

There are no adverse implications from the transfer of ownership of the Assets to GWRL, and the transaction costs are purely internal. GWRL currently owns many similar assets recently acquired from KiwiRail.

For the reasons above a fiscally-neutral transfer of ownership of the Assets at book value from Council to GWRL is proposed.

The process by which this transfer would occur is:

- Council will transfer the Assets to GWRL at book value and receive new shares in WRCHL of equal value
- GWRL will receive the Assets at book value and issue new shares of equal value to WRCHL

- WRCHL will receive new shares in GWRL and issue new shares of equal value to Council.

These transactions are shown diagrammatically in **Attachment 1** to this report

It is proposed that the transfer take place on 30 June 2012 at the book value of the assets (\$5.3 million). It is recommended that a simple sale and purchase agreement is entered into between Council and GWRL as a record of the Assets transferred and the consideration provided in return for the transfer (refer **Attachment 2**)

If the Assets are acquired by GWRL at the 30 June 2012 book value, the acquisition does not require shareholder approval as either a significant transaction under the GWRL constitution, as a major transaction under the Companies Act 1993.

4.2 Process for the issue of new shares

Before the boards of WRCHL or GWRL can issue the new shares they require the consent of the sole shareholder and entitled person of the respective Companies.

Council as sole shareholder and entitled person of WRCHL must approve the issue of 5,309,283 full paid ordinary \$1 shares by WRCHL.

WRCHL as sole shareholder and entitled person of GWRL must approve the issue of 5,309,283 fully paid ordinary \$1 shares by GWRL.

WRCHL approval as sole shareholder and entitled person of GWRL will be provided via an Entitled Persons Agreement. This will be requested at the 6 June 2012 board meeting (Report 12.191).

The Directors of both WRCHL and GWRL must also approve the issue of the new shares.

The approval of the GWRL Directors will be provided via a Directors Written Resolution completed at the 6 June 2012 board meeting (Report 12.192).

The approval of the WRCHL Directors will also be provided via a Directors Written Resolution completed at the 6 June 2012 board meeting (Report 12.191.)

Council, as the sole shareholder and entitled person in WRCHL must approve the issue of shares by WRCHL. This will be formally confirmed by signing an Entitled Person's Agreement (refer **Attachment 3**).

4.3 Car park land currently owned by Council

Having considered legal advice Officers recommend that the Car Park Land should not be transferred by Council to GWRL for the following reasons:

- consistency with the treatment of existing land in which GWRL has an interest (ie, GWRL is a lessee or licence holder rather than an owner of land)
- flexibility for Council to potentially use the land for other purposes if it is not required for park and ride purposes.

The alternative approach by which GWRL may secure an interest in the land is by receiving a lease or licence from Council to use the land. At this stage it is considered that there is no apparent benefit in establishing a lease or licence between Council and GWRL given that no rental would be payable. It is proposed that the Car Park Land remain in Council ownership with no lease or licence established at this time.

This decision may be revisited at some future date if GWRL decides to invest significantly in improvements to the Car Park Land or when a new rail service operator requires legal rights to use the land.

4.4 Leases or licences on car park land owned by TLAs

There is currently a lack of consistency in the terms and conditions of the car park leases and licences that exist between Council and the 4 TLAs in the region and also with NZTA.

Ideally the existing arrangements with the TLAs and NZTA should be replaced with revised and standardised terms and conditions and record GWRL as the lessee/licencee. It is proposed that, as there is no pressing need to undertake this work and as it may be difficult to engage the TLAs and NZTA in what could be a time consuming process, officers recommend that that new lease/licence documentation only be established between each TLA, NZTA and GWRL, as and when natural opportunities arise to do so.

5. Communication

No communication is considered necessary in relation to the matters addressed in this report.

6. Recommendations

That Council:

1. ***Receives the report.***
2. ***Notes the content of the report.***
3. ***Agrees that Council's land based rail related assets, described in the Agreement for Sale and Purchase attached to this report (the Assets), be transferred to GWRL on 30 June 2012 at book value of \$5.3 million and in a fiscally neutral transaction.***

4. *Notes that the transaction will be funded by the issue of 5,309,283 fully paid ordinary \$1 shares by GWRL to WRCHL and by the issue of 5,309,283 fully paid ordinary \$1 shares by WRCHL to Council.*
5. *Authorises the Chief Executive on Council's behalf to execute the Agreement for Sale and Purchase.*
6. *Notes that as WRC Holdings Limited sole shareholder and entitled person, Council must consent to the issue of shares by WRC Holdings Limited.*
7. *Approves the issue of 5,309,283 fully paid ordinary \$1 shares in WRC Holdings Limited by signing **Attachment 3**, being the agreement of the sole shareholder and entitled person of the Company pursuant to section 107 of the Companies Act 1993 (**Entitled Person's Agreement**).*
8. *Authorises Councillors Fran Wilde and Prue Lamason to sign the Entitled Person's Agreement on behalf of Council.*
9. *Requests that the Chair of the Council confirms the consent and approvals referred to in this report, in writing to WRC Holdings Limited.*
10. *Agrees that rail commuter car park land remain in Council ownership.*
11. *Notes that it is not proposed that any lease or licence be established between Council and GWRL in regard to the rail commuter car park land at this time.*
12. *Notes that new leases/licences from the TLAs and NZTA in favour of GWRL in regard to TLA and NZTA owned car park land will be established as and when natural opportunities arise to do so.*

Report prepared by:

Report approved by:

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Attachment 1: Diagram of transaction

Attachment 2: Agreement for Sale and Purchase of Assets

Attachment 3: Entitled Person's Agreement