

28 November 2008

Minister for the Rugby World Cup

## **RNZ 2011 Board Appointment process, Eden Park Resource Consents and Amendment Bill**

### **Purpose of Report**

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- 1 The purpose of this report is to provide you with further information, as requested, on issues and activities relating to the government's involvement in the Rugby World Cup (RWC).

### **Analysis**

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- 2 Further to your first meeting with officials on Tuesday 25 November regarding the Rugby World Cup portfolio, you have requested further information on the following:
  - i. Rugby New Zealand 2011 (RNZ 2011) Board appointment process;
  - ii. Eden Park resource consent issues;
  - iii. Eden Park Trust Act – Private Amendment Bill;
  - iv. Exposure and risk for government regarding its financial contribution to RNZ 2011 and wider RWC involvement; and
  - v. Legacy opportunities arising from hosting the RWC.
- 3 This briefing provides you with information about the RNZ 2011 Board appointment process and the Eden Park resource consent issues and amendment bill.
- 4 The Treasury is responsible for monitoring the Crown's ownership interest in RNZ 2011 and will provide you and the Associate Minister for the Rugby World Cup with separate advice on the fiscal risk to government regarding the RWC, through the Minister of Finance. We have recently begun work on an outline of the

broader risks to government. This requires input from a range of agencies and will be completed early in the new year.

- 5 Officials are preparing a more detailed briefing on the status of work on RWC legacy outcomes for New Zealand, and the issues in taking this work forward. This briefing will be submitted to you on Thursday 4 December.

### **Rugby New Zealand 2011 Board Appointment Process**

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- 6 RNZ 2011 is a joint venture between the Government and the New Zealand Rugby Union (NZRU). It is responsible for delivering the 2011 Rugby World Cup tournament, in accordance with the Host Union Agreement between the NZRU and the International Rugby Board (IRB). The Shareholding Ministers for RNZ 2011 are yourself and the Minister of Finance.
- 7 The Shareholders Agreement and Constitution for RNZ 2011 specify that it will have a Board of up to 9 directors:
  - Three appointed by the Crown, following consultation with the NZRU;
  - Three appointed by the NZRU, following consultation with the Crown;
  - Up to three independents, jointly appointed by the Crown and the NZRU.
- 8 The Shareholders Agreement specifies that one of the NZRU directors will be the Chair, and one of the Crown directors will be Deputy Chair.
- 9 The current Directors on the Board of RNZ 2011 and their respective term expiry dates are listed below:

*Crown Directors:*

Alan Isaac (Deputy Chair)	30 June 2009
John Wells	30 June 2010
Tim Robinson	13 April 2011

*Independent Directors:*

Lois Appleby	30 June 2009
Sir Ron Carter	31 December 2011

*NZRU Directors:*

Jock Hobbs (Chair)	-
Steve Tew	-
Chris Moller	-

- 10 The NZRU must be consulted on any proposed appointment or reappointment. Such an appointment would require a paper to Cabinet's Appointments and Honours Committee.
- 11 As an independent Director, Ms Appleby is jointly appointed by the NZRU and the Crown.

- 12 Treasury, as the agency responsible for monitoring the Crown's ownership interest in RNZ 2011, has up to now been responsible for providing advice on RNZ 2011 Board appointments, reporting directly to the Minister for the Rugby World Cup and the Minister of Finance, as shareholding Ministers.

#### *Expansion of the RNZ 2011 Board*

- 13 The RNZ 2011 Board initially consisted of 6 directors comprising 2 Crown, 2 NZRU and 2 independents.
- 14 At the beginning of 2008, Chris Moller stepped down as Chief Executive of the NZRU and was replaced by Steve Tew. The NZRU wished to retain Mr Moller on the RNZ 2011 Board, given his knowledge and his relationships with the IRB, and initially proposed adding Mr Moller to the Board, so that it would consist of 3 NZRU, 2 Crown and 2 independent directors.
- 15 After negotiations with shareholding Ministers a compromise was agreed where the Board would be expanded to 9 including 3 NZRU, 3 Crown and 3 independent directors. Tim Robinson was appointed as the third Crown director at the same time Mr Moller was (re)appointed as the third NZRU director.
- 16 The NZRU and the Crown agreed that the third independent director's position would be left vacant for the time being as there are no obvious skill gaps on the Board that require an additional independent director. A third independent director would be jointly appointed by the NZRU and the Crown.

#### **Eden Park Redevelopment: Resource Consents**

- 17 Further to our meeting at which we discussed the state of Eden Park's consents, outlined below are the issues and risks remaining with securing all consents necessary to complete the project within the time requirements for Rugby World Cup 2011.

#### *Progress to Date*

- 18 As you are aware, the Park obtained resource consent in early 2009 prior to the establishment of the Redevelopment Board for a \$385M, 60,000 seat stadium which was higher and larger than the current proposal. Although the \$240.5M design which was subsequently approved by the Crown in May 2007 is for a smaller capacity (50,000) and stands of lesser bulk and height, consent variations are necessary for all the material design changes.
- 19 The South Stand variation was sought in December 2007 and granted in May 2008. The East Stand variation was sought in July 2008 and granted in November 2008. Both applications involved a reduction in height, capacity and scale. They were granted by an independent Planning Commissioner without any public notification on the basis that the effects were no more than minor, and that the changes caused fewer adverse impacts than the design already consented. This process has, nevertheless, taken twelve months to secure and has been processed by the Auckland City Council in a time well outside the prescribed statutory timeframes.

- 20 All the major structures of the redevelopment (with one exception) are now consented. This means that the construction programme subject to receiving timely building consents, can proceed on the schedule agreed with Fletcher Construction to meet the IRB's required completion date of October 2010 (excluding the temporary facilities).

*Remaining Consent Variations*

- 21 There are still a number of aspects of the redevelopment that remain to be "re-consented" or which require resource consent. These are:
- i. Remaining variations of conditions of the redevelopment consent to reflect changed design such as changed location and downsizing of the transport hub, changed plaza layouts and landscaping design
  - ii. Deletion of conditions of the original redevelopment consent to reflect changed design such as a condition to maintain public access to the Number 2 grounds which is no longer practicable given Auckland Cricket is not shifting from that ground
  - iii. Variation of noise conditions of the redevelopment consent to provide for lower noise standards (higher noise levels) for a period of more than a year (October 2010 - November 2011 when the South Stand will be completed, East Stand completed, and temporary seating in place but no acoustic barrier)
  - iv. Temporary structure for the RWC 2011 – temporary stands in the West and East.
- 22 Of these changes, the construction of the new Western Concourse, which will provide the new main pedestrian entrance to the Park, is the most critical part of the application. The construction programme has this scheduled to commence in September/October 2009 in order for the redevelopment to finish on schedule (which is 27 October 2010).
- 23 The Redevelopment Board's planning and legal advisers have reviewed the likely timeline for securing a variation to the resource consent through the usual local authority process, followed by an appeal to the Environment Court.<sup>1</sup> The timeline assumes that all relevant statutory timelines would be observed – which to date has never occurred. Assuming it were to file an application at the beginning of December (which it is able to do, but has been requested by the Council to file after the Christmas/New Year break), the earliest hearing would occur in April 2009 with a decision from Commissioners in May. An appeal could then be heard in July with a decision in August. However none of this allows for:
- The Council or the Court allowing extensions of time;
  - The Council not meeting timeframes for reporting;
  - Delays with the Council processing documents;

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<sup>1</sup> It has operated throughout on the assumption that one of the submitters will appeal the initial decision (or that the Board would appeal if it received an adverse decision).

- Availability of Court time to hear an appeal.

24 The Board's experience of the last 12 months has been whether for resourcing or other reasons the City Council slips many deadlines, despite ongoing assurance the project is being given a high priority. Illustrative of this is the fact that, after receiving the decision from the Planning Commissioner for the East Stand, Council officers took four weeks to record and post out the decision. The Board's legal and planning advisers are not confident that a final decision could be reached in the time required and, accordingly, have recommended consideration of the call in provisions of the RMA.

*Call In Under the RMA*

25 Section 141M of the Resource Management Act provides that the Minister for Environment may call in matters that are or are part of proposals of national significance. He may intervene on his own initiative or on request from the applicant (i.e. the Redevelopment Board) or the local authority (Auckland City Council) required to process and determine the matter. The Minister must have regard to:

- i. The extent to which a matter is or is part of a proposal of national significance under Section 141B(2); and
- ii. Whether the local authorities that would process and decide the matter if the Minister did not call it in –
  - i. have the capacity to process and decide it; and
  - ii. consider that the exercise of any of the powers in subsection (4) would be appropriate.

26 There are a number of factors which the Minister may have regard to in determining whether a matter is one of national significance, but the Board considers the most relevant is paragraph (a):

- (a) has aroused widespread public concern or interest regarding its actual or likely effect on the environment, including the global environment.

27 In this regard the Board has highlighted the following:

- RWC 2011 will deliver an estimated \$507M to GDP (Source: Horwath Asia Pacific Ltd Economic Report 2006);
- The Government, as a joint venture partner in Rugby NZ 2011 Ltd, has (we understand) committed to providing Eden Park as the finals venue for RWC 2011 and to meeting an October 2010 completion date;
- Failure to meet these obligations could result in New Zealand losing the RWC 2011 hosting rights;
- Delays arising from the consenting process could in turn cause material delay to the construction programme with a consequential loss of confidence by the IRB in New Zealand's ability to complete the project on time.

- 28 Based on past applications under this section, the Board's advisers believe there is a reasonable basis for asserting the project meets the relevant criteria.
- 29 If this view is supported within Government, there is an option to either refer the matter directly to the Environment Court or for the Minister to refer the matter to a Board of Inquiry for determination. Both options would remove the Council from its regulatory authority role; would shorten the decision-making process to a "one stop shop"; and result in a final decision (other than appeals on points of law). The principal advantage of the direct referral to the Environment Court is that it would have the potential to be a more speedy process. The principal advantage of referral to a Board of Inquiry is that it would preserve all the substantive rights and process of a hearing by a local authority; could be heard by persons already familiar with the matter (i.e. the Planning Commissioner who has already issued decisions on this matter) and may be viewed as a less contentious approach.<sup>2</sup>
- 30 While either process is likely to deliver a speedier and more certain decision, and thereby significantly de-risk the construction programme there would remain a residual risk, however slight, of either judicial review or appeals on questions of law. Either of these actions would again imperil completion of the project on time. The Board believes that the only means of removing this risk altogether would be to enact some form of legislative resource consent (such as was considered for the waterfront stadium). The Board has not turned its mind to considering this option in any detail.
- 31 Time frames are tight and the Board is anticipating the need to make a firm decision on whether to seek Ministerial views on call in within the next few weeks. Before doing so, it would wish to ensure a full opportunity for discussion with stakeholders, including the Auckland City Council.
- 32 We consider it would be appropriate for the Chairman of the Eden Park Redevelopment Board, Mr John Waller, to brief you on this and the progress of the redevelopment generally and accordingly have invited him to put in place arrangements with your office for that to occur, preferably at the Park itself.

### **Eden Park Trust Amendment Bill**

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- 33 The Eden Park Trust Amendment Bill ("the Amendment Bill") is necessary to make the amendments to the Eden Park Trust Act 1955 ("the EPTA") required to implement the new governance arrangements that are discussed below. The EPTA is a private Act and the amendments will be made through a private amendment bill. The promoter of the Amendment Bill is the Eden Park Trust Board. The Crown (through MED and the Parliamentary Counsel Office) is assisting due to its involvement in the negotiation of the new governance arrangements, and in the interests of ensuring an efficient process and satisfactory outcome.
- 34 The Amendment Bill has been drafted and now requires a sponsor Member of Parliament to take charge of the Amendment Bill as it progresses through the

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<sup>2</sup> It is the Board's understanding that all but one of the s.141B call in cases have been a referral to a Board of Inquiry.

House. The ordinary practice is that the Member of Parliament for the electorate to which the bill relates, or in which the promoter is based, will be asked to carry out this function. There is no restriction, however, on another Member of Parliament taking charge of a private bill.

- 35 In light of your portfolio responsibilities as the new Minister for the Rugby World Cup we seek your agreement to sponsor the Amendment Bill.
- 36 The Amendment Bill will incorporate a new Eden Park Trust Deed as a schedule to the Amendment Bill (replacing the current Schedules 2 and 3). The Trust Deed will set out the new constitution, functions and powers of the Eden Park Trust Board. It will also detail the land to be held on trust by the Trust Board and the terms on which the Trust Board must manage and administer that land.
- 37 Once a sponsor has been confirmed, there are a number of other procedural steps that are required under the Standing Orders before a private bill can be introduced to the House. A detailed description of the procedural requirements and an estimated timetable for progression of the Amendment Bill is set out in an appendix to this report.
- 38 If you agree to sponsor the Amendment Bill the Trust Board is ready to commence the public notice requirements immediately. Assuming the public notice requirements for the Amendment Bill are commenced in December 2008, it is anticipated that the Amendment Bill will be ready for introduction to the House in early 2009.

*Background – Proposed Future Eden Park Governance Arrangements*

- 39 In May 2007 the Crown signed an Agreement Relating to the Redevelopment of Eden Park which committed the Crown to underwrite the redevelopment required for the Rugby World Cup 2011 up to a maximum of \$190 million (plus GST). The other parties to that agreement were the Eden Park Trust Board and the Eden Park Board of Control.
- 40 Eden Park is a privately owned facility operated for the benefit of Auckland Rugby and Cricket. The Trust Board holds and governs Eden Park under the EPTA, which is a Private Act. The Trust Board currently consists of the following members:
  - i. Mr W B Nicoll (Chairman)
  - ii. Mr L G Cormack
  - iii. Mr M J Dick
  - iv. Mr R A Fisher
  - v. Mr P D Hunter
  - vi. Justice B Paterson
  - vii. Mr G Vivian
  - viii. Sir Wilson Whineray

- 41 Day to day management of Eden Park is carried out by the Board of Control, the primary duty and function of which is to use and maintain Eden Park to the best advantage of the Auckland Cricket Association (ACA) and Auckland Rugby Union (ARU). The Board of Control has various other functions and duties under the EPTA and it is the Board of Control that has, at all times, the custody, control, and management of Eden Park. The Board of Control currently consists of the following members:
- i. Mr P D Hunter (Chairman)
  - ii. Mr K Baguley
  - iii. Mr G Carruthers
  - iv. Mr R A Fisher
  - v. Mr D J Graham
  - vi. Mr B King
  - vii. Mr G Muir
  - viii. Mr W B Nicoll
  - ix. Mr R F Smith
- 42 Under the agreement between the Trust Board and the Crown a new Redevelopment Board was established to manage the redevelopment of Eden Park. All Redevelopment Board members have been appointed to the Board of Trustees to provide the necessary authority to make decisions in relation to Eden Park. The Redevelopment Board is chaired by John Waller and has the following members<sup>3</sup>:
- i. Brian Nightingale, General Manager, McKee Fehl Construction;
  - ii. Neville Harris, Deputy Secretary, Ministry of Economic Development;
  - iii. Rob Fisher, Eden Park Trustee.
- 43 A condition of the Redevelopment Agreement and the Crown's financial support was that the parties would, within 3 months, reach an agreement on a new structure for the long term governance of Eden Park and set a timetable for implementing that structure.
- 44 A fundamental principle of the negotiations was that the interests and rights of the Park's beneficiary bodies, the ARU and ACA, needed to be acknowledged and recognised in the new arrangements. The governance negotiations were chaired by the Eden Park Trust Board and included representatives of the Board of Control, the ARU, the ACA, and the Ministry of Economic Development.
- 45 Four documents were produced which incorporate the future governance arrangements agreed after negotiations. They are:
- i. The Deed Relating to the Governance of Eden Park;
  - ii. The draft Eden Park Trust Amendment Act;

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<sup>3</sup> Nigel Cass (General Manager Tournament Services, Rugby New Zealand 2011 Limited) recently resigned from the Redevelopment Board and has not yet been replaced.



- iii. A draft Trust Deed; and
- iv. A draft Agreement Relating to the Relocation of ACA

46 Only the Deed Relating to the Governance of Eden Park (“the Governance Deed”) has so far been executed. The other documents are model documents which the parties acknowledge may require to be amended once the Amendment Bill is passed or as circumstances and events require. The Trust Deed can only be executed by the parties after the EPTA has been amended. The Relocation Agreement is not a document the Crown needs to be a party to. It will only become a relevant instrument if at some point in the future Auckland Cricket decides to relocate to another venue – Western Springs being the principal possibility.

#### *Governance Deed*

- 47 The Governance Deed was executed on 18 September 2007. It acknowledges the parties have reached agreement on the long term governance arrangements for Eden Park and that both the Crown and the Trust Board will work together to achieve the passing of the Eden Park Trust Amendment Bill (“the Amendment Bill”).
- 48 It further records that certain terms in the draft Trust Deed are regarded as “essential terms” and any amendment of them will require a unanimous resolution of the new Trust Board. These terms for the most part relate to the existing rights and interests of Auckland Cricket and Rugby.
- 49 The Trust Deed will be executed once the EPTA is amended and an implementation date agreed.

#### *Draft Trust Deed*

- 50 The Trust Deed sets out the detail of the new governance arrangements. It is modelled on the trust deed in place for Westpac Stadium in Wellington. The Trust Deed sets out the new constitution, functions and powers of the Eden Park Trust Board. It will also detail the land to be held on trust by the Trust Board and the terms on which the Trust Board must manage and administer that land.
- 51 The Trust Objects include wider public benefit interests with an appropriate reflection of the historical interests of the Auckland Rugby Union and Auckland Cricket Association.
- 52 [9(b)(ii)]

53 [9(b)(ii)]

54 [9(b)(ii)]

*Procedural Requirements and Estimated Timetable*

55 The timing of the implementation of the new governance arrangements relating to Eden Park is contingent on the EPTA being amended. The EPTA is a private Act and the amendments will be made through a private amendment bill. The Eden Park Trust Board is the promoter of the Amendment Bill.

56 As noted above the drafting of the Bill is now complete; however there are a number of procedural steps that are required under the Standing Orders before the Amendment Bill can be introduced to the House.

57 [9(g)(i)]

## **Recommended Action**

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We recommend that you:

- 1 **Note** the content of this report
- 2 **Note** that the Chairman of the EPRB will seek the opportunity to brief you on issues relating to the final resource consents for the redevelopment and the possibility of recourse to the call in procedures under the RMA
- 3 **Agree** to sponsor the Eden Park Trust Amendment Bill to meet the Eden Park Trust Act
- 4 **Forward** a copy of this report to the Associate Minister for the Rugby World Cup

Mark Steel  
Deputy Secretary  
Industry & Regional Development Branch