

## Carla Ditchfield-Hunia

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**From:** Nicole Wooster  
**Sent:** Thursday, 3 May 2018 11:13 a.m.  
**To:** Carla Ditchfield-Hunia  
**Subject:** FW: Far North Holdings Limited - number of directors, status of directors, appointment of directors and remuneration of directors



**Nicole Wooster**

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**From:** Samantha Edmonds  
**Sent:** Wednesday, January 31, 2018 5:44 AM  
**To:** Shaun Clarke  
**Cc:** Huia Arahanga-Doyle  
**Subject:** FW: Far North Holdings Limited - number of directors, status of directors, appointment of directors and remuneration of directors

Hi Shaun,  
I have sought guidance from Legal Services on FNHL and related queries on directors.

I will need your input on Sarah Peterson if we are proceeding with report no. 2 below.

### Director numbers

- The FNHL constitution is minimum 3 and maximum 5 directors.
- Current number is 4 (Ross Blackman is considered within this count)
- Count will be at 5, the maximum, should Murray be approved at Council
- To consider a 6 director, Sarah, Council need to approve by majority (75%) a temporary increase to 6 directors

### Director appointment

Both FNHL constitution and FNDC policy require a shareholder (FNDC) resolution. A report is required.

### Reports for Council meeting 15 February 2018

In light of the above I will complete the below 4 reports and have to you tomorrow for review so that we include in the main agenda distribution.

1. Appointment of director, Murray McCully
2. Increase directors maximum from 5 to 6 for a period until to 30 June 2018 at which point Ian Walker tenure expires. Appointment of director, Sarah Peterson 1 March 2018
3. Consider the remuneration report commissioned by FNHL
4. Extend Ross Blackman tenure expiry from 30 June 2019 to 30 September 2019, as he is not returning on 1 July 2018 rather it will now be 1 October 2018

Sam



**Samantha Edmonds**

**General Manager - Corporate Services**

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**From:** Robert Manuel

**Sent:** Tuesday, January 30, 2018 10:53 PM

**To:** Samantha Edmonds

**Subject:** RE: Far North Holdings Limited - number of directors, status of directors, appointment of directors and remuneration of directors

Hi Sam,

Please refer to my answers and comments below, interpolated in blue.

If you have any further queries please let me know and I will be happy to endeavour to answer them.

Regards,

Robert



**Robert Manuel**

**Manager - Legal Services**

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**From:** Samantha Edmonds

**Sent:** Tuesday, 30 January 2018 2:25 p.m.

**To:** Robert Manuel

**Subject:** FW: Far North Holdings Limited - number of directors, status of directors, appointment of directors and remuneration of directors

**Importance:** High

Hi Robert,

Would it be possible to receive and update on timing for your input?

I am needing to target the 15 February Council meeting, so realistically need to be completing the reports tomorrow for inclusion in the main agenda distribution.

Thanks  
Sam



**Samantha Edmonds**

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**From:** Samantha Edmonds

**Sent:** Thursday, January 25, 2018 2:42 PM

**To:** Robert Manuel

**Subject:** Far North Holdings Limited - number of directors, status of directors, appointment of directors and remuneration of directors

**Importance:** High

Hi Robert,

Following our brief conversation I would appreciate your knowledge and support on the following questions,

**Number of directors**

Per clause 28 of the Constitution of Far North Holdings Limited is states that the minimum number of directors shall be 3 and the maximum number of directors shall be 5.

It also states that the shareholders (FNDC) may increase the maximum number of directors by special resolution.

The current directors are,

Name	Role	Term Ends
William (Bill) Birnie	Chairman	30 October 2019
Kevin Baxter	Director	30 June 2020
Ian Walker	Director	30 June 2018
Ross Blackman*	Director	30 June 2019

#### Status of directors

\*Ross Blackman is currently excused and is not receiving director fees. Per attached document (28062017142721-0001.pdf) Ross would be absent for 12 months from 1 July 2017. In addition to this I have received further correspondence noting that he is not returning until 1 October 2018, despite the most recent update to Council stating return on 1 July 2018.

Q. Is Ross Blackman considered to form the 'number of directors' for the purposes of minimum 3 and maximum 5?

Yes. Although he is away on long-term leave of absence he is technically still in office. He has not vacated his office by resigning, or being removed from office, or becoming disqualified. Evidently also he has not appointed an alternate. In these circumstances there is nothing in the Companies Act 1993 or in the company's constitution that provides for him to be excluded from a count of directors. Therefore he is considered to form part of the number of directors for which the limit in the constitution is 3 and the maximum 5.

#### Appointment of directors

Per policy 2117 Appointment and Remuneration of Directors for Council Organisations, FNDC advertised for a director vacancy on 21 December 2017 and applications closed 15 January 2018. As the Mayor was on leave, he appointed Deputy Mayor, FNDC CEO and Chairman FNHL to a panel. The panel shortlisted candidates and interviewed on 23 January 2018.

The panel has a preferred candidate to fill the vacancy and also a further appointment they wish to occur.

Based on the outcome of the Status of directors question, is the number of directors considered 4 or 5 with the appointment of the preferred candidate? This questions again the status of Ross Blackman.

As there are already 4 directors (including Mr Blackman who is technically still in office), the appointment of this preferred candidate to fill the recently-advertised vacancy would bring the total to 5 i.e. the maximum permitted by the constitution.

Per policy 2117, clause 2.a reads that the panel must report to Council on each of the candidates, making a recommendation on its preferred candidate (if it wishes to do so).

Q. The appointment of directors needs to occur with a report to Council including the recommendation. Y/N

Yes, for the appointment to occur a report including the recommendation needs to be prepared. I note that according to the list of committee delegations made by Council in December 2016 which appears on TK, the appointment of FNHL directors is a power that has been delegated to the Corporate Committee.

Q. Is it appropriate to 'skip' the report and directly appoint without a resolution at Council?

No. Both the Council's policy and the company's constitution require a Council (shareholder) resolution. As noted above that resolution can be passed by the Corporate Committee under delegated authority.

The panel also have a candidate they wish to appoint 31 March 2018.

Q. Would this appointment consider the number of directors as 5 or 6 with the appointment of a second preferred candidate to commence 31 March 2018? This questions again the status of Ross Blackman and takes into account that Council have appointed the preferred candidate above.

This appointment cannot legally be made within the current 5-person limit as it would push the total up to 6. However this appointment could be made if the Council exercises its power under clause 28 of the constitution to increase the maximum number of directors by special resolution.

(The word “special” is actually irrelevant in our case. Under the Companies Act “special resolution” means “a resolution approved by a majority of 75 percent or, if a higher majority is required by the constitution, that higher majority, of the votes of those shareholders entitled to vote and voting on the question.” However in our case FNDC is the only shareholder; an ordinary Council resolution is all that would be required. Whilst the Corporate Committee has the power to decide on the appointment of FNHL directors, I take the view that that only applies within the number limit currently specified in the constitution. In my view an increase of the maximum number of directors from 5 to a higher number cannot be made by a Corporate Committee resolution (unless the Council decides to add to the Committee’s delegated authorities); at present the increase in the maximum would need a full Council resolution.)

**Remuneration of directors**

Per clause 53 the Board’s power to authorize remuneration and other benefits is limited, it appears the board may authorize 53.1 the payment of remuneration or the provision of other benefits by the Company to a director for services as a director or in any other capacity, including managing director **only if the relevant action has been approved in writing by the shareholders or approved by an ordinary resolution of the shareholders.**

Q. Council would need to consider and approve an increase to director fees?

Yes, the Council would need to consider and approve any increase to director’s fees. Unlike the appointment of directors, the setting of fees has not been delegated to the Corporate Committee.

(I have included FNHL Director fees December 2017.pdf which is a report FNHL commissioned an external party to prepare).

I appreciate your help with this Robert.

Sam



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