



## COVERSHEET

<b>Minister</b>	Hon Shane Jones	<b>Portfolio</b>	Regional Economic Development
<b>Title of Cabinet paper</b>	Provincial Growth Fund Limited: Appointments	<b>Date to be published</b>	31 October 2019

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
1 July 2019	Provincial Growth Fund Limited: Appointments	Office of Minister for Regional Economic Development
1 July 2019	Provincial Growth Fund Limited: Appointments <i>CAB-19-MIN-0320.01</i>	Office of Minister for Regional Economic Development

### Information redacted

**YES / NO** (please select)

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Some information has been withheld to maintain legal professional privilege.

In Confidence

Office of the Minister for Regional Economic Development

Chair, Cabinet Appointments and Honours Committee

## **PROVINCIAL GROWTH FUND LIMITED: APPOINTMENTS**

### **Proposal**

- 1 This paper outlines my intention to appoint Mr Rodger Finlay, Mr Neville Harris QSO and Mr Graeme Mitchell as directors of the company to be called Provincial Growth Fund Limited (PGFL) for three year terms commencing on 1 October 2019 and expiring on 30 September 2022.
- 2 Of these three directors, I intend to appoint Mr Finlay as the Chair.

### **Background**

- 3 PGFL is the company being established to hold loans and/or equity investments being made through the Provincial Growth Fund (PGF). Such loans and/or equity investments are presently being managed by the Provincial Development Unit (part of the Ministry of Business, Innovation and Employment – MBIE) and will be novated (transferred) to PGFL after it has been established.
- 4 Cabinet has agreed that PGFL will be established as a “Schedule 4A” Crown entity company under the Public Finance Act 1989 – Cabinet Economic Development Committee Minute DEV-19-MIN-0084 refers. A Schedule 4A company was deemed the most appropriate form of Crown entity to undertake the tasks required to be performed by PGFL.
- 5 An Order In Council will be required to establish PGFL as a Schedule 4A company and MBIE has organised for the Parliamentary Counsel Office (PCO) to draft this.
- 6 The final steps to establish PGFL cannot then be completed until after directors have been appointed to PGFL. This is because the Companies Act 1993 requires a company to have at least one director (and PGFL’s draft Company Constitution is likely to require that there be a minimum of two directors).
- 7 In the meantime, the name of the company has been reserved at the Companies Office, pending the appointment of the directors to PGFL.
- 8 PGFL’s role will be somewhat different from that of most Schedule 4A Crown entity companies and the PGFL Board’s role will be very limited. In particular:
  - 8.1 PGFL will be established as an asset holding company – to hold legal and beneficial title to investment assets and to make and receive payments in relation to some of the projects the PGF has invested in.

- 8.2 PGFL will have no operational role in analysing or providing advice on project application, or for managing investments after Ministerial decisions have been made.
- 8.3 Investment operational responsibilities will be undertaken by the Provincial Development Unit.
- 8.4 MBIE will undertake most of the tasks required to manage the PGF investments that are transferred to PGFL under a Management Agreement between PGFL and MBIE.
- 9 Accordingly, the PGFL directors' roles will be limited to:
- 9.1 Managing the agreement between PGFL and MBIE – which will outline the roles and responsibilities of both parties.
- 9.2 Providing the Accountability Documents required by the Companies Act 1993 and the Crown Entities Act 2004.
- 9.3 Providing regular reporting to shareholding Ministers on a quarterly basis, in common with the arrangements for other Crown entities and State-owned enterprises.
- 9.4 Undertaking any other tasks necessary to govern the company in accordance with its Company Constitution and legislation.
- 10 As a result, a small board needs to be appointed to govern PGFL.
- 11 I have decided that a board of three directors should be appointed of which one director will become the Chair. Having three directors should ensure that there will always be at least two directors in place to govern the company, in accordance with PGFL's Company Constitution and good governance practice.

#### **Comment**

- 12 Given the very limited role the PGFL Board will have, I propose to appoint two members from the Provincial Growth Fund's Independent Advisory Panel (the IAP) as directors of PGFL.
- 13 The advantage of such appointees is that they will already be familiar with the operation of the PGF and the loans and/or equity investments that will be novated (transferred) to PGFL. This approach should also assist in minimising costs to the Crown in managing the appointment process and on an ongoing basis.
- 14 The appointees from the IAP will be Mr Rodger Finlay, the current Chairperson of the IAP and Mr Neville Harris QSO, a current member of the IAP.
- 14.1 Mr Finlay is a Fellow of Chartered Accountants Australia & New Zealand and a Chartered Fellow of the Institute of Directors. For the past 11 years, Mr Finlay has been solely engaged in governance. He is currently Chair of PGG Wrightson Ltd, a Governor of Radio New Zealand Ltd, Deputy Chair of Rural

Equities Ltd, a director of Ngai Tahu Holdings Corporation Ltd and Moeraki Ltd.

14.2 Mr Harris worked in the New Zealand public service for 39 years with prominent roles in the management and supervision of the regulatory framework for corporations, securities, insolvency, intellectual property rights and Crown mineral estate. He was the Registrar of Companies from 1989 to 2013, Director of the Government's Rugby World Cup 2011 Office and is also on the board of the Christchurch Stadium Trust.

15 Should the IAP be dissolved prior to the end of the three-year terms of the directors, then Mr Finlay and Mr Harris would be given the opportunity to reconsider their directorships on the Board of PGFL.

16 I also propose to appoint a third director to PGFL with extensive accounting and auditing expertise. The third director will be Mr Graeme Mitchell

16.1 Mr Mitchell is a former Audit and Assurance Partner at Deloitte and the former Chair of the External Reporting Board. He is currently a director of Retirement Income Group Ltd (trading as Lifetime Retirement Income) and is Deputy Chair of the National Provident Fund Board of Trustees, amongst other positions. He also has experience on the Audit and Risk Committees of various government and council entities. Mr Mitchell is also the Honorary Consul General for Norway.

17 These candidates are all well qualified to be directors of PGFL and have the appropriate skills and experience necessary to govern PGFL.

### **Representativeness of reappointment**

18 I recognise that ideally, I would look to achieve balanced representation on the Board in terms of gender, age, ethnicity and geographic representation. However, for such a small board this is not always possible to achieve.

19 I have focussed on ensuring that there is an appropriate mix of skills and experience, drawing particularly on the strengths that existing members of the Independent Advisory Panel of the Provincial Growth Fund will be able to bring to the Board of PGFL.

### **Remuneration**

20 As a "Schedule 4A" Crown entity company, the proposed director fees have been guided by The Treasury's Commercial Operations Group's Fees Methodology for Crown-entity companies and State-owned enterprises.

21 MBIE has completed an assessment using that methodology, resulting in an ordinary director rate of \$23,000 per annum. The Chair will receive a rate of \$34,500 per annum.

22 MBIE and The Treasury review the fees paid to directors from time to time and if the nature of PGFL's activities were to change in the future, the level of fees could be reviewed.

## Appointment process and consultation

- 23 The appointment process has been different from the standard appointment process because of my desire to appoint two existing members of the Independent Advisory Panel to the Board of PGFL. This will provide advantages for the operation of PGFL.
- 24 I have consulted with the Minister of Finance as the other intended shareholding Minister of PGFL.

## Conflicts of interest

- 25 The directors of PGFL will have a duty *“to act in good faith and in the best interests of the company”* (section 131 of Companies Act 1993 refers), whereas the members of the IAP have a duty to act in the best interests of the PGF under the terms of reference for the IAP. Given the close relationship between the role of the IAP and PGFL, this creates the potential for conflicts of interest for IAP members who will also be PGFL directors.

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Legal professional privilege

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- 30 Information concerning any other conflicts of interest is still outstanding because I await information from the director candidates. The appointments will not be finalised before appropriate enquiries concerning conflicts of interest have been completed. I will report to Cabinet on the outcome of these enquiries should any issues arise.

## Timing and Publicity

- 31 I am not intending for there to be any publicity regarding these appointments.

## Recommendation

32 It is recommended that the Committee:

**note** my intention to appoint Mr Rodger Finlay, Mr Neville Harris QSO and Mr Graeme Mitchell as directors of the company to be called Provincial Growth Fund Limited (PGFL) for three year terms commencing on 1 October 2019 and expiring on 30 September 2022.

**note** of these three directors, I intend to appoint Mr Finlay as the Chair of PGFL.

Authorised for lodgement

Hon Shane Jones

Minister for Regional Economic Development

PROACTIVELY RELEASED