



BRIEFING

Provincial Growth Fund Limited: Documentation for Board Appointments

Date:	24 July 2019	Priority:	Medium
Security classification:	In Confidence	Tracking number:	0186 19-20

Minister	Action sought	Deadline
Hon Shane Jones Minister for Regional Economic Development	Agree to sign and send the attached appointment letters to the intended directors of the new Provincial Growth Fund Limited company.	29 July 2019
Hon Grant Robertson Minister of Finance	For information only.	31 July 2019

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Michael Bird	General Manager, Entity Performance and Investment, MBIE	<small>Privacy of natural persons</small>	✓
James Cunningham	Performance Advisor, MBIE		

The following departments/agencies have been consulted
The Treasury

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



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Purpose

To seek your agreement to finalise the appointment process for the Board of the company to be called Provincial Growth Fund Limited (PGFL).

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Note** three directors will be required for the PGFL Board. *Noted*
- b **Note** that the Minister for Regional Economic Development and Minister of Finance have previously agreed to appoint Mr Rodger Finlay, Mr Neville Harris QSO and Mr Graeme Mitchell to the Board of PGFL (MBIE briefing 3743 18-19 refers). *Noted*
- c **Note** that on 1 July 2019, Cabinet has noted these appointments are to be made and that Mr Finlay will be the Chair of PGFL. *Noted*
- d **Agree** to sign and send the attached appointment letters to the intended directors of PGFL. *Agree / Disagree*

Michael Bird
**General Manager, Entity Performance and
Investment Branch**
Labour, Science and Enterprise, MBIE
..... / /

Hon Shane Jones
**Minister for Regional Economic
Development**
..... / /

Background

1. Provincial Growth Fund Limited (PGFL) is the company being established to hold loans and/or equity investments being made through the Provincial Growth Fund. Such loans and/or equity investments are presently being managed by the Provincial Development Unit (the PDU), part of the Ministry of Business, Innovation and Employment (MBIE) and will be novated (transferred) to PGFL after it has been established.
2. 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.
3. 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 requires that there are a minimum of two directors).
4. As shareholding Ministers in PGFL, you have agreed to appoint:


Rodger John FINLAY;
Neville Owen HARRIS, QSO; and
Graeme Robertson MITCHELL

to the Board of PGFL for three year terms commencing on 1 August 2019. You have also agreed that Mr Finlay will be the Chair of PGFL.
5. On 1 July 2019, following reference from the Cabinet Appointments and Honours Committee, Cabinet noted these appointments (Cabinet Minute CAB-19-MIN-0320.01 refers).
6. In the meantime, the name of the company has been reserved at the Companies Office, pending the appointment of the directors to PGFL.

The PGFL Board

Background checks on intended directors

7. On your behalf, and with the intended directors' consent, MBIE organised background checks on the intended directors. These checks have not identified anything of concern.
8. We have also obtained disclosure forms from the intended directors.
9. Mr Mitchell has not disclosed any potential conflicts of interest.
10. As expected, under the conflict of interest section, Mr Finlay and Mr Harris have disclosed that they are members of the Provincial Growth Fund's Independent Advisory Panel (the IAP), which may create the potential for actual or perceived conflicts of interest.

11. Legal professional privilege


The PGFL Board's role will be limited

12. PGFL's role will be somewhat different from that of most Schedule 4A Crown entity companies. In particular:
 - 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.
 - PGFL will have no operational role in analysing or providing advice on project application, or for managing investments after Ministerial decisions have been made.
 - Investment operational responsibilities will be undertaken by the PDU, which is part of MBIE.
 - 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.
13. Accordingly, the PGFL directors' roles will be limited to:
 - Managing the agreement between PGFL and MBIE, which will outline the roles and responsibilities of both parties.
 - Providing the Accountability Documents required by the Companies Act 1993 and the Crown Entities Act 2004. These include:
 - Statement of Intent (SOI), which needs to be updated at least once every three years.
 - Annual Statement of Performance Expectations (SPE).
 - Annual Report, which includes audited financial statements.
 - Providing regular reporting to shareholding Ministers on a quarterly basis, in common with the arrangements for other Crown entities and State-owned enterprises.
 - Undertaking any other tasks necessary to govern the company in accordance with its Company Constitution and legislation.
14. The Board is responsible to you as the shareholding Ministers for its performance. MBIE will monitor PGFL's performance and advise you on any issues related to the performance of the Board and PGFL as a company.
15. Board appointments are your principal mechanism for ensuring that the Board is well-placed to undertake the tasks required by PGFL's Company Constitution.

The proposed appointment letters

16. Appointment letters for the directors of Crown-owned companies set out the terms and conditions of appointment.
17. Directors serve office at the discretion of shareholding Ministers and may be removed at any time, and for any reason, upon written notice to the company.
18. The letters cover some standard points applicable to any Crown-owned company, but have also been tailored to take account of PGFL's particular circumstances.
19. In respect of Mr Finlay and Mr Harris, the letters have been further tailored. This is to keep the option open to shareholding Ministers to review their directorships of PGFL should they cease to be members of the IAP. Their letters also reflect the expectation for them to manage any potential conflicts of interest arising from their membership of the IAP and directorship of PGFL.

Board fees

20. Given the limited role of the PGFL Board, we expect it will only meet approximately four to six times per year.
21. 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.
22. MBIE has completed an assessment using that methodology, resulting in an ordinary director rate of \$23,000 per annum. The Chair would receive a rate of \$34,500 per annum.
23. MBIE and The Treasury review the fees paid to members from time to time and if the nature of PGFL's activities were to materially change in the future, the level of fees could be reviewed.

Next Steps

24. Should you agree, sign and send the attached appointment letters to Messrs Finlay, Harris and Mitchell.
25. In the coming weeks, MBIE will provide you with separate advice on operational aspects to be confirmed relating to the establishment of PGFL. In particular:
 - Whether to provide PGFL with exemptions from the requirements in the Crown Entities Act 2004 about the acquisition of financial products, borrowing, guarantees, indemnities, and derivatives rules.
 - The Order In Council required to add the PGFL Company to Schedule 4A of the Public Finance Act 1989.
 - PGFL's Constitution and Management Agreement between PGFL and the PDU.
 - Confidential advice to Government
 - PGFL's capital structure.
 - A suggested Letter of Expectations for shareholding Ministers to send to the Board of PGFL once the company has been established.
26. Once all of the above aspects have been confirmed and approved, PGF investment agreements will be able to be novated to PGFL.

Annexes

Annex One: Appointment letters

Annex One: Appointment letters

- Rodger Finlay (Chair)
- Neville Harris, QSO
- Graeme Mitchell

PROACTIVELY RELEASED

Mr Rodger Finlay
84 Harts Creek Lane
Northwood
CHRISTCHURCH 8051

By email to: Privacy of natural persons

Dear Rodger

Appointment as a director and Chair of Provincial Growth Fund Ltd

Following Cabinet's agreement, and the completion of background checks, I am pleased to confirm your appointment as a director and the Chair of the newly-established company called Provincial Growth Fund Ltd (PGFL). Your appointment will be effective from 1 August 2019 and be for a term of three years ending on 31 July 2022 unless it is extended or terminated before then.

In accepting this appointment, please ensure that at all times you remain familiar with and fully understand the requirements of:

- The Companies Act 1993
- The Crown Entities Act 2004
- Relevant sections of the Public Finance Act 1989
- Any other legislation relevant to the operation of PGFL.

In addition, one of your first roles as a director will be to arrange for PGFL to enter into a Management Agreement with the Provincial Development Unit (part of the Ministry for Business, Innovation and Employment - MBIE) to undertake various tasks necessary for the operation of PGFL. I understand that a copy of the draft Management Agreement has recently been sent to you by MBIE.

You will need to ensure that you keep yourself fully familiar with the obligations and responsibilities of the PGFL director position and arrange for appropriate insurance against possible professional negligence in your capacity as a director of PGFL. Should there be any change in your circumstances that may have an impact on your ability to continue to serve as a director of PGFL, you undertake to promptly advise shareholding Ministers of this, via MBIE.

You will be paid director fees of \$34,500 per annum (note that GST is not applicable) and this is deemed to fully cover the duties you will undertake as a director and the Chair of PGFL. MBIE and The Treasury periodically review the level of fees paid to the directors of Crown-owned companies and make recommendations on fee levels to shareholding Ministers. Should there be a material change to the nature of PGFL's operations in future, then shareholding Ministers will

consider reviewing the level of director fees. You will also be entitled to claim for actual and reasonable travelling and other expenses incurred in carrying out your duties as a director of PGFL.

Please note that directors of Crown-owned companies hold office at the discretion of shareholding Ministers and may be removed as a director at any time, and for any reason, by written notice sent from shareholding Ministers to the company. Should you cease to be a member of the Independent Advisory Panel (the IAP) of the Provincial Growth Fund for any reason, then your directorship of PGFL will also be reconsidered by shareholding Ministers.

I recognise you have already disclosed the potential for conflicts of interest to arise from your membership of both the IAP and your directorship of PGFL. Please ensure that you take steps to manage such conflicts, should any arise.

Please confirm your acceptance of this appointment by signing at the bottom of this letter and returning it to James Cunningham at MBIE Privacy of natural persons by 1 August 2019.

I look forward to working with you and thank you for your contribution to the successful operation of PGFL.

Yours sincerely

Hon Shane Jones
Minister for Regional Economic Development

For and on behalf of the shareholding Ministers in Provincial Growth Fund Ltd

I accept the appointment to the Board of PGFL on the above terms and conditions.

Rodger John Finlay

Signature:

Date:

Mr Neville Harris, QSO
48 Penrose Street
Woburn
LOWER HUTT 5010

By email to: Privacy of natural persons

Dear Neville

Appointment as a director of Provincial Growth Fund Ltd

Following Cabinet's agreement, and the completion of background checks, I am pleased to confirm your appointment as a director of the newly-established company called Provincial Growth Fund Ltd (PGFL). Your appointment will be effective from 1 August 2019 and be for a term of three years ending on 31 July 2022 unless it is extended or terminated before then.

In accepting this appointment, please ensure that at all times you remain familiar with and fully understand the requirements of:

- The Companies Act 1993
- The Crown Entities Act 2004
- Relevant sections of the Public Finance Act 1989
- Any other legislation relevant to the operation of PGFL.

In addition, one of your first roles as a director will be to arrange for PGFL to enter into a Management Agreement with the Provincial Development Unit (part of the Ministry for Business, Innovation and Employment - MBIE) to undertake various tasks necessary for the operation of PGFL. I understand that a copy of the draft Management Agreement has recently been sent to you by MBIE.

You will need to ensure that you keep yourself fully familiar with the obligations and responsibilities of the PGFL director position and arrange for appropriate insurance against possible professional negligence in your capacity as a director of PGFL. Should there be any change in your circumstances that may have an impact on your ability to continue to serve as a director of PGFL, you undertake to promptly advise shareholding Ministers of this, via MBIE.

You will be paid director fees of \$23,000 per annum (note that GST is not applicable) and this is deemed to fully cover the duties you will undertake as a director. MBIE and The Treasury periodically review the level of fees paid to the directors of Crown-owned companies and make recommendations on fee levels to shareholding Ministers. Should there be a material change to the nature of PGFL's operations in future, then shareholding Ministers will consider reviewing the

level of director fees. You will also be entitled to claim for actual and reasonable travelling and other expenses incurred in carrying out your duties as a director of PGFL.

Please note that directors of Crown-owned companies hold office at the discretion of shareholding Ministers and may be removed as a director at any time, and for any reason, by written notice sent from shareholding Ministers to the company. Should you cease to be a member of the Independent Advisory Panel of the Provincial Growth Fund for any reason, then your directorship of PGFL will also be reconsidered by shareholding Ministers.

I recognise you have already disclosed the potential for conflicts of interest to arise from your membership of both the IAP and your directorship of PGFL. Please ensure that you take steps to manage such conflicts, should any arise.

Please confirm your acceptance of this appointment by signing at the bottom of this letter and returning it to James Cunningham at MBIE Privacy of natural persons) by 1 August 2019.

I look forward to working with you and thank you for your contribution to the successful operation of PGFL.

Yours sincerely

Hon Shane Jones
Minister for Regional Economic Development

For and on behalf of the shareholding Ministers in Provincial Growth Fund Ltd

I accept the appointment to the Board of PGFL on the above terms and conditions.

Neville Owen Harris

Signature:

Date:

Mr Graeme Mitchell
18 Major Durie Place
Waikanae Beach
WAIKANAE 5036

By email to: Privacy of natural persons

Dear Graeme

Appointment as a director of Provincial Growth Fund Ltd

Following Cabinet's agreement, and the completion of background checks, I am pleased to confirm your appointment as a director of the newly-established company called Provincial Growth Fund Ltd (PGFL). Your appointment will be effective from 1 August 2019 and be for a term of three years ending on 31 July 2022 unless it is extended or terminated before then.

In accepting this appointment, please ensure that at all times you remain familiar with and fully understand the requirements of:

- The Companies Act 1993
- The Crown Entities Act 2004
- Relevant sections of the Public Finance Act 1989
- Any other legislation relevant to the operation of PGFL.

In addition, one of your first roles as a director will be to arrange for PGFL to enter into a Management Agreement with the Provincial Development Unit (part of the Ministry for Business, Innovation and Employment - MBIE) to undertake various tasks necessary for the operation of PGFL. I understand that a copy of the draft Management Agreement has recently been sent to you by MBIE.

You will need to ensure that you keep yourself fully familiar with the obligations and responsibilities of the PGFL director position and arrange for appropriate insurance against possible professional negligence in your capacity as a director of PGFL. Should there be any change in your circumstances that may have an impact on your ability to continue to serve as a director of PGFL, you undertake to promptly advise shareholding Ministers of this, via MBIE.

You will be paid director fees of \$23,000 per annum (note that GST is not applicable) and this is deemed to fully cover the duties you will undertake as a director. MBIE and The Treasury periodically review the level of fees paid to the directors of Crown-owned companies and make recommendations on fee levels to shareholding Ministers. Should there be a material change to the nature of PGFL's operations in future, then shareholding Ministers will consider reviewing the

level of director fees. You will also be entitled to claim for actual and reasonable travelling and other expenses incurred in carrying out your duties as a director of PGFL.

Please note that directors of Crown-owned companies hold office at the discretion of shareholding Ministers and may be removed as a director at any time, and for any reason, by written notice sent from shareholding Ministers to the company.

Please confirm your acceptance of this appointment by signing at the bottom of this letter and returning it to James Cunningham at MBIE (Privacy of natural persons) by 1 August 2019.

I look forward to working with you and thank you for your contribution to the successful operation of PGFL.

Yours sincerely

Hon Shane Jones
Minister for Regional Economic Development

For and on behalf of the shareholding Ministers in Provincial Growth Fund Ltd

I accept the appointment to the Board of PGFL on the above terms and conditions.

Graeme Robertson Mitchell

Signature:

Date: