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**REPORT 2**

1215/52/IM

## **INDOOR STADIUM DEVELOPMENT GOVERNANCE OPTIONS PAPER**

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### **1. Purpose of Report**

The purpose of this report is to seek approval to initiate a special consultative procedure on a proposal to establish a new Council Controlled Organisation. This would be in the form of a charitable Trust, and be called the Wellington Indoor Stadium Development Trust. It would have the objectives of leading further work and fund-raising for the proposed Indoor Stadium development.

### **2. Recommendations**

It is recommended that the Committee:

1. *Receive the information.*
2. *Recommend to Council that officers are authorised to continue the preliminary work required in regard to the proposal to establish a new charitable Trust to manage the Indoor Stadium development.*
3. *Note that, as it is proposed that the new Trust will be a Council Controlled Organisation, the Local Government Act 2002 requires that the proposal to establish the Trust must be adopted in accordance with a special consultative procedure.*
4. *Note that the special consultative procedure to 'Establish the Wellington Indoor Stadium Development Trust' will run concurrently with the special consultative procedure on the 2005/06 Draft Annual Plan and that the statement of proposal to 'Establish the Indoor Stadium Development Trust' will be included in the Draft Annual Plan publication.*
5. *Note that a new initiative for funding of \$96,000 for the new Indoor Stadium Development Trust will be included as part of the 2005/06 Draft Annual Plan process.*
6. *Recommend that Council:*
  - a. *approve the statement of proposal to 'Establish the Wellington Indoor Stadium Development Trust', as attached in Appendix One;*

- b. initiate a special consultative procedure to be conducted at the same time as or combined with the consultation on the 2005/06 Draft Annual Plan;*
- c. delegate to the Chief Executive the authority to prepare the summary of information required for the proposal and to establish and determine the form and distribution of the summary of information.*

### **3. Executive Summary**

The Council is working with a number of interest groups on a project to design, fund and construct a new indoor stadium for the benefit of Wellington and the region. Since consulting on the proposal to establish an Indoor Stadium through the 2004/05 Draft Annual Plan, officers have discussed the project with a principal users group representing netball, basketball and volleyball. Two key actions are necessary to move the project ahead:

1. Develop a robust business case
2. Launch a fund-raising campaign

The principal users do not have the resources necessary to undertake this project, and have requested that the Council assist. After consideration, three options were identified as broadly representing the available options:

- a. Council officers undertake an in-house project
- b. An existing entity (the Wellington Regional Stadium Trust) be asked to undertake the project
- c. Council establishes a new Council Controlled Organisation (CCO) to undertake the project

In order to move ahead with this project, the preferred option is (c) and the recommendation to the Council is the establishment of a new entity to take a leading role through the next development stages. This development entity would be established as a Charitable Trust, and be called the Wellington Indoor Stadium Development Trust. This is similar to the development trust that was established to progress the development of the Wellington Regional Stadium.

The Local Government Act 2002 (LGA) requires that the Council initiate a special consultative procedure to consult on any proposal to establish a Council Controlled Organisation. The special consultative procedure requires that a statement of proposal (plus summary) is prepared and publicised as the basis for consultation. It is recommended that the consultation be undertaken concurrently with consultation on the 2005/06 Draft Annual Plan. The committee is asked to approve the attached Statement of Proposal for consultation.

It is recommended that a budget of \$96,000 be included in the Annual Plan for 2005/06.

The statement of proposal to establish the Trust is attached as Appendix I. A detailed action plan for the establishment of the entity is attached as Appendix II.

## 4. Background

### 4.1 History of the project

Over the past few years the Council has completed feasibility studies and preliminary design work for an Indoor Stadium. The total construction costs, including fit-out, were estimated at \$35 million. It was further estimated that the annual net operating cost (i.e. excluding depreciation and interest) would be around \$50,000.

The proposed Indoor Stadium would feature up to 12 courts used principally by netball, basketball and volleyball. The facility would be used by many other sports groups, by schools and for regional and national tournaments.

As part of the 2004/05 Draft Annual Plan the Council consulted on this proposal to gauge public support for the initiative. The indoor sports stadium proposal attracted 156 submissions, and there was a very high level of support with just under 80% of the submissions in favour of it progressing. The proposal was not included in market research at that time. A summary of these results was reported back to the Council. The Annual Plan notes that the Council will consult further before any decision is made on the proposal.

In September 2004 a proposal was received from representatives of basketball, netball and volleyball. They sought funding from the Council to assist with a campaign for promoting the Indoor Stadium. The proposal had three elements:

1. For a six person **Board of Champions** to be set up, principally to commence fund-raising activity.
2. To establish a **Principal Users Team** (PUT) representing the three sports and Sport Wellington, responsible for creating a capability statement that would define the details of the proposed Stadium.
3. To appoint a Project Co-ordinator to work for the Board and the PUT.

The costs were estimated at between \$100,000 and \$150,000 for a twelve month campaign.

### 4.2 Current position

Council officers have considered the proposal from the principal users, and following further discussions have suggested a slightly different structure, that can achieve the same goals as envisaged by the group. It is proposed that a separate entity be established to focus on developing a detailed business case for the Indoor Stadium. This development entity would work with key stakeholders, such as the principal users group, potential funding partners, and the Council, to establish a business case that is robust and achievable, and to identify and obtain funding.

This is similar to the early stages of the outdoor Stadium, where a development trust was used for planning and fundraising.

The objectives of the development entity would include:

1. To act as a vehicle for the interim development of a proposed Indoor Stadium for Wellington.
2. To prepare a detailed business case for presentation to the Council and other key stakeholders; including
  - a. Site selection – confirm the preferred site for the proposed Indoor Stadium;
  - b. Design – work with the principal users group and other key stakeholders to finalise the concept design and configuration of the Indoor Stadium;
  - c. Cost – establish the likely capital cost of the Indoor Stadium from the concept design and configuration;
  - d. Capital funding – identify realistic funding structure and sources for all capital cost;
  - e. Governance and operations – ascertain the preferred governance, management, operational structure and costs and user fees from the final design and configuration;
3. To identify and secure external funding through a fundraising campaign.
4. At a time stipulated by the Council, to hand over responsibility for the construction and operation of the Indoor Stadium - to either an existing entity or a new entity, in accordance with recommendations contained in the completed business plan.

The following section will discuss the rationale for a separate development entity; and the various options available to the Council for the entity.

## **5. Discussion**

Officers have evaluated a range of options for undertaking the development project. This includes variations on an in-house undertaking, whether by convening a working group, or through use of existing resources. External options include using an existing entity or establishing a new organisation. After some evaluation, three options have been discussed in more detail within this report. These are considered to be the most practicable alternatives.

The first option for discussion is for the Council to undertake the project in-house.

### **5.1 In-house project option**

Council officers could undertake parts of the project in-house, and by employing specialist advice, in much the same way as for the Arts Centre project. This would include most elements of developing the business case.

This option is likely to be the most cost-effective, although much of the specialist advice will need to be externally sourced – for example architects, quantity surveyors, legal and financial (tax) advice. The project would be able to utilise existing Council resources; no additional governance costs (e.g. for monitoring and reporting) would be incurred.

Administratively this would be the simplest to set up and operate, as consultation would not be required. No establishment costs would be incurred in pulling a working group together.

It is also the most tax efficient option; although no tax issues have been identified.

This option is the most ‘future-proof’, in that it does not restrict future decisions, particularly relating to the options for owning, managing and operating the Indoor Stadium.

However the key difference is the fund-raising requirement, which could not be successfully initiated within the Council. There are two fund-raising requirements – to assist with development project expenses; and fundraising for the construction of an Indoor Stadium.

The cost of the proposed facility has been estimated at \$35 million for this project. If the development project was managed internally, there would remain an expectation that the Council would “foot the bill”, thus potentially reducing the success of the fund-raising campaign. In addition, and as experienced with the Arts Centre, other agencies are reluctant to give funding directly to the Council.

This option is therefore not recommended, but will be included in the statement of proposal for consultation.

## **5.2 WRST option**

Another option that has been considered is for an existing entity to undertake the project. The logical candidate would be the Wellington Regional Stadium Trust, which has some synergies:

- It is in a related business
- The concourse is the current preferred site for the proposed Indoor Stadium

However this is not considered appropriate at this time. WRST is fully occupied with the successful management and operation of Westpac Stadium, and would not have sufficient resources to undertake the project. This has been demonstrated to some extent by the recent separation of the Basin Reserve facility (and establishment of the Basin Reserve Trust), for similar reasons. Trustees of WRST, which are appointed jointly by Council and Greater Wellington Regional Council (GWRC), would need to agree that the project was conducive to, and would further the objects of WRST. The trustees also require the consent of both Councils before entering into any major transaction. This would add some complications, as GWRC may not have any interest in the Indoor Stadium proposal. In addition the Trust would require approval from ANZ (due to covenants in place).

The current court proceedings in regard to WRST’s tax exempt status may also have a significant impact on the WRST’s ability to identify and raise funds.

For these reasons, the option is not recommended at the present time, but will be included in the statement of proposal for consultation.

### 5.3 A new development entity

The remaining alternative is for the Council to establish a new, separate entity.

There are no policy criteria surrounding the structure and governance of the council's investments in external organisations. Rather, each is considered on a case-by-case basis. The first consideration is how much control of the entity should be retained by the Council.

When the Council is asked to provide funding or assistance of a reasonably significant nature to external organisations, or where there is a strategic alignment with the Council's objectives, there is a desire to protect the investment and to ensure that specific outcomes are achieved. This is usually achieved by board representation, which is equivalent to an ownership stake. Where the Council has the greatest investment, the precedent has been for the Council to have majority representation on the board.

With regard to Council representation or ownership, the LGA identifies a range of options, recognising the differing degrees of Council involvement:

<i>Entity</i>	<i>Council owns</i>
a. Owned and operated within Council	100%
b. Council Controlled Organisation (CCO) <sup>1</sup>	50 - 100%
c. Council Organisation (CO)	1 – 49%
d. Other – an organisation without Council representation.	0%

A CO could be established if a natural partner exists that can make a material contribution to the entity. While the principal users are key partners that the Council will be working with, they will not be able to bring significant funding to the project. This tends to rule out the option of some form of partnership or joint ownership of the development entity (although the Council will ensure that the views and needs of the principal users are represented on the trust).

It is therefore preferable that a CCO be established. This is an entity where – under the definitions within the Local Government Act 2002 (LGA) – the Council (along with any other local authorities) holds 50% or more of the voting rights or the right to appoint 50% or more of the board members.

It should be noted that there are a number of other mechanisms that can provide similar controls. One alternative is for the Council to consider itself a funder of the organisation, in much the same manner as a bank. In such a relationship the Council would contract its rights through legal arrangements such as funding deeds or lease agreements. Other, more indirect mechanisms include allocations of subsidies, grants and other assistance if performance measures are met. These other mechanisms are not considered appropriate in this instance. There are no assets involved, and the entity may be expected to have a fairly short existence. In addition, the focus and experience of committed trustees is shown to be vital to the prospects of success for the project.

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<sup>1</sup> Council Controlled Trading Organisations (CCTO's) are a sub-set within CCO's.

### **5.3.1 Legal form for the CCO**

There are two basic legal forms that the Council will most commonly use when establishing CCO's: charitable trust<sup>2</sup> and company.

A company is likely to be used where there is a trading undertaking, and where commercial motivations exist - such as achieving a return for the shareholder (the Council). This is applicable where the Council is establishing an operation that could be provided by the private sector. A company will usually be a CCTO, and thus will be liable to pay income tax – ensuring the Council is not achieving an unfair advantage over commercial entities.

A Charitable Trust is used where the aims are charitable and focused on providing a benefit to the community. Assets held in a charitable trust must be applied towards the trust's charitable objects and cannot be returned to the Council.

As noted, one focus for the entity will be on fund-raising activities. Any potential funders will be seeking assurance that their contributions will be used for the charitable purpose of establishing an Indoor Stadium for the benefit of the people of Wellington.

It should be noted that determining the most suitable structure for owning and operating the Indoor Stadium will be addressed by the development entity and included as part of the business case. Opting to establish a trust at this point does not unduly limit any future options.

## **6. Implications of establishing a CCO**

This report has traversed a number of considerations, and concluded that the most appropriate means of moving the project forward would be to establish a separate (external) entity, in the legal form of a charitable trust, that is a Council Controlled Organisation (CCO).

The Trust will be set up with provision for up to eight trustees, although it is envisaged that six will be sufficient at the outset. All appointments are to be made by the Council.

The Council will consult with other key stakeholders, and would expect to appoint trustees that are representative of those interests – including the principal users (basketball, netball and volleyball) and Sport Wellington.

### ***Tax implications***

At this stage no tax implications have been identified. Officers will consult further with legal and tax advisors once consultation is complete. It is noted that IRD and/or Charities Commission<sup>3</sup> approval will be required for the Trust's charitable status. This is necessary to ensure that funds raised are not liable for income tax.

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<sup>2</sup> Note that there are other legal forms including partnerships, joint ventures, and incorporated societies, but none would be considered appropriate in this instance.

<sup>3</sup> The Charities Bill establishing the Charities Commission is expected to be passed in early 2005. Preliminary provisions in relation to the Charities Commission will come into force the day after the Act receives Royal assent. The remainder of the Act, including provisions relating to registration, will come into force on a date to be appointed by the Governor-General by order in Council. The Select Committee has recommended that the Inland Revenue retain responsibility for the administration of the approved

## 6.1 Special consultative procedure

The LGA requires that the Council initiate a special consultative procedure to consult on any proposal to establish a Council Controlled Organisation. The special consultative procedure requires that a statement of proposal is prepared and publicised as the basis for consultation.

### 6.1.1 Timetable

The following is a high level summary of the actions required for undertaking a special consultative procedure, with estimated timings. This draft timetable also sets out the actions required following the consultation, assuming that the Council still wishes to establish the Indoor Stadium Development Trust.

Action	Timing
Prepare statement of proposal and summary of information	Underway
Undertake special consultative procedure	6 – 10 weeks
Council decision	2 - 3 weeks
Prepare the draft documents (Trust deed)	8 – 12 weeks
Obtain IRD/Charities Commission approval (charitable status)	8 – 12 weeks
Appoint trustees	2 - 4 weeks
Finalise the Trust documents	1 – 4 weeks
Establish the Trust	1 week

Note that some of the activities can be run concurrently. For example IRD (or Charities Commission) approval can take place while the draft documents are being prepared. It is normal practice to allow 2-3 months for this approval to be granted.

This indicative timetable requires a minimum of 20 weeks from this point to establish a new Council Controlled Organisation, and an estimated maximum of 34 weeks. It makes sense to conduct the special consultative procedure concurrently with consultation on the 2005/06 Draft Annual Plan (DAP) due to the close overlap in timing.

Running the consultation concurrently with the 2005/06 DAP will ensure the broadest possible consideration of the proposal, and is administratively more efficient. This will still allow the Trust to be established early in the 2005/06 financial year, barring unforeseen circumstances. This is a very similar process to that which was followed in establishing the Basin Reserve Trust.

### 6.1.2 Statement of proposal

Section 83 of the LGA requires the preparation of a statement of proposal and summary of information. The statement of proposal for the establishment of an Indoor Stadium Development Trust has been included as Appendix I to this report. This includes an assessment of the reasonably practicable options that have been identified.

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donee regime with the Commission being responsible for determining whether an entity qualifies for registration as a charitable entity.

## 6.2 Cost to Council

The following estimates have been made for the project expenditure:

Year	Item	Cost
2004/05	Consultation costs – <i>(included with DAP process)</i>	-
2005/06	Establishment costs for the entity – legal, tax, other advice	\$20,000
	Project management and co-ordination	\$70,000
	Trustee/director fees	-
	Meeting expenses	\$6,000
	Support services – finance, HR, IT – <i>(supplied by the Council)</i>	-
	Consultancy – architects, QS, legal etc	\$50,000
	Fundraising – publications, communication, events	\$20,000
	<b>TOTAL COST</b>	<b>\$166,000</b>

The principal users have requested a contribution from the Council of between \$100,000 and \$150,000; officers suggest that \$96,000 be included as the Council's contribution for the 2005/06 year, to cover establishment, project management and meeting expenses. There is an expectation that the development trust will obtain external grants and sponsorship to assist with the balance of project expenditure. As noted earlier, this will more than offset the costs incurred for establishment and ongoing governance.

The issue of funding for the future years can be revisited once the business case is presented to Council. This could reasonably be expected within a 6 - 8 month period, i.e. by February 2006; and should set out the future costs in detail.

## 7. Conclusion

Since consulting on the proposal to establish an Indoor Stadium through the 2004/05 Draft Annual Plan, officers have discussed the project with a principal users group. Two key actions are necessary to move the project ahead:

1. Develop a robust business case
2. Launch a fund-raising campaign

The principal users do not have the resources necessary to undertake this project, and have requested that the Council assist. After consideration, three options were identified as broadly representing the available options:

- a. Council officers undertake an in-house project
- b. An existing entity (the Wellington Regional Stadium Trust) be asked to undertake the project
- c. Council establishes a new Council Controlled Organisation (CCO) in the form of a charitable trust to undertake the project

The preferred option is (c) and the recommendation to the Council is that it undertakes a special consultative procedure for this purpose. It is further recommended that the consultation be undertaken concurrently with the 2005/06 Draft Annual Plan. The committee is asked to approve the attached Statement of Proposal for consultation.

It is recommended that a budget of \$96,000 be included in the 2005/06 Draft Annual Plan.

Contact Officer: *Wayne Maxwell, Portfolio Manager Council Controlled Organisations*

## Supporting Information

### **1) Strategic Fit / Strategic Outcome**

*The proposal supports Council activities as a facilitator of recreation partnerships and provider of recreation services. Agreement to the proposal will contribute to Council meeting the outcome of offering a diverse range of quality recreation and leisure activities (see outcome 7.1 Recreation Opportunities).*

### **2) LTCCP/Annual Plan reference and long term financial impact**

*Project C586 was included with \$100k funding in the 2003/04 Annual Plan, but no funding was included in 2004/05. The changes indicated here, if approved, will lead to an increase in operating expenditure in 2005/06.*

### **3) Treaty of Waitangi considerations**

*The Tenth Trust and other parties will be consulted with specifically as part of the special consultation procedure.*

### **4) Decision-Making**

*This is not a significant decision. The report sets out a number of options and reflects the views and preferences of those with an interest in this matter that have been consulted.*

### **5) Consultation**

#### **a) General Consultation**

*The Council's tax advisers have been consulted during the development of this report. More broadly, the Council is required under legislation (LGA 2002) to consult on this matter.*

#### **b) Consultation with Maori**

*Mana whenua will be consulted with as part of the special consultative procedure, and their comments will be noted and are covered in the report as appropriate.*

### **6) Legal Implications**

*Council's lawyers have been consulted during the development of this report.*

### **7) Consistency with existing policy**

*There is no policy relating to the establishment of CCO's. This report follows procedures required by legislation, and is consistent with current practise.*

## **Appendix I      Statement of Proposal**

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### **Indoor Stadium Development Trust**

#### **Statement of Proposal to establish a new Council Controlled Organisation**

## **1. Introduction**

This proposal seeks to establish a new council controlled organisation, in the form of a charitable trust to be known as the Indoor Stadium Development Trust. The purpose of the Trust will be to prepare a business case for the establishment of an Indoor Stadium and to undertake a fundraising programme.

Council officers have held discussions with representatives of various interest groups over the past five years about the proposal to establish a new indoor stadium. The Council has funded a feasibility study which identified a possible design and site that included up to 12 courts at a cost of \$35 million. The Council now proposes to establish a new trust to continue the project, with trustees appointed by Wellington City Council. The Trust will work closely with the principal users (netball, basketball and volleyball) and other key stakeholders.

Under the Local Government Act, before establishing a new council controlled organisation Wellington City Council is required to prepare a detailed statement of the proposal and consult on it in accordance with a special consultative procedure.

## **2. Reasons for the proposal**

In recent years it has become apparent that Wellington is lacking adequate facilities for a number of sports. In particular, netball, basketball and volleyball users have highlighted the need for a large-scale indoor sports facility. Over the past three years the Council has completed feasibility studies and preliminary design work for an Indoor Stadium. The total construction costs, including fit-out, were estimated at \$35 million. It was further estimated that the annual net operating cost (i.e. excluding depreciation and interest) would be around \$50,000.

The proposed Indoor Stadium would feature up to 12 courts used principally by netball, basketball and volleyball. The facility would be used by many other sports groups such as badminton and gymnastics, by schools and for regional and national tournaments.

As part of the 2004/05 Draft Annual Plan the Council consulted on this proposal to gauge public support for the initiative. The indoor sports stadium proposal attracted a very high level of support with just under 80% of the submissions in favour of it progressing.

In September 2004 a proposal was received from representatives of basketball, netball and volleyball (the principal users). Following discussions with this group, Council officers have proposed that a separate entity be established to focus on developing a detailed business case for the Indoor Stadium. This development entity would work with key stakeholders, such as the principal users group, potential funding partners, and the Council, to establish a case that is robust and achievable, and to identify and obtain

funding. This is similar to the process used for the establishment of the Westpac Stadium.

The objectives of the entity would include:

1. To act as a vehicle for the interim development of a proposed Indoor Stadium for Wellington.
2. To prepare a detailed business case for presentation to the Council and other key stakeholders; including
  - a. Site selection – confirm the preferred site for the proposed Indoor Stadium;
  - b. Design – work with the principal users group and other key stakeholders to finalise the concept design and configuration of the Indoor Stadium;
  - c. Cost – establish the likely capital cost of the Indoor Stadium from the concept design and configuration;
  - d. Capital funding – identify realistic funding structure and sources for all capital cost;
  - e. Operations – ascertain the preferred governance, management and operational structure and costs from the final design and configuration;
3. To identify and secure external funding through a fundraising campaign.
4. At a time stipulated by the Council, and as recommended by the proposed business case, to hand over responsibility for the development of the Indoor Stadium and any assets to either an existing entity or a new entity.

### **3. Options considered**

In the preparation of this proposal Council officers have considered a number of options for management of the development project, and these can be distilled down to three reasonably practicable options. The following is a summary of these options including an assessment of the relevant benefits and costs of each option and other matters that are considered to be relevant.

#### **3.1 Establish a new Council Controlled Organisation in the form of a charitable trust**

This is the preferred option. The benefits include:

##### ***Benefits***

- Provides the best prospects for fundraising
- Ensures that focus is retained on project outcomes
- Is tax efficient, provided charitable status is approved
- Allows a broad range of interests and skills to be represented
- Does not unduly restrict future options

### ***Disadvantages***

- One-off establishment costs required (legal, tax and other consulting)
- On-going governance or compliance costs (e.g. for monitoring and reporting)
- Administratively more complex to set up and operate (public consultation is required; legal and IRD/Charities Commission<sup>4</sup> processes and approvals required)

### ***Contribution to community outcomes***

The Council has not yet established its community outcomes (as defined under section 91 of the LGA). Until these are established, it is considered appropriate to refer to the outcomes listed under relevant key achievement areas in the Council's Annual Plan.

The ultimate goal for the project is the establishment of an Indoor Stadium. This will contribute to increasing the level and quality of participation of Wellington residents in a number of sports. Through this, it will contribute to the following outcomes:

- Recreation opportunities (provision of quality infrastructure)
- Events and identity (contributing to economic prosperity)

This proposal is not about the operation of the Indoor Stadium, but is considering the most appropriate governance structure for fundraising and planning for the Indoor Stadium. It is assumed that the better the governance that can be applied, the greater will be the prospects of successfully achieving the goals and outcomes for the Indoor Stadium.

Each option is considered to offer broadly the same contribution to achieving these outcomes.

### ***The impact on the Council***

The impact on the Council is neutral, when compared to the other options. Support from the Council will be provided under each of the options up to an equivalent level. This level of funding and support will not have a material effect on Council's ability to meet its present and future needs.

### ***Any other relevant matters***

It is important to obtain buy-in from all key stakeholders. This is best achieved by having commitment and participation in the project. A CCO established in the form of a charitable trust will allow all users and stakeholders have an opportunity to participate and be heard.

The additional funds required for establishment and governance are not significant, and will be offset by funds raised from other sources by the new entity.

The proposal is subject to the proposed trust obtaining tax and donee exempt status from the IRD (or Charities Commission).

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<sup>4</sup> The Charities Bill establishing the Charities Commission is expected to be passed in early 2005. Preliminary provisions in relation to the Charities Commission will come into force the day after the Act receives Royal assent. The remainder of the Act, including provisions relating to registration, will come into force on a date to be appointed by the Governor-General by order in Council. The Select Committee has recommended that the Inland Revenue retain responsibility for the administration of the approved donee regime with the Commission being responsible for determining whether an entity qualifies for registration as a charitable entity.

### **3.2 Wellington City Council to manage the project internally**

This option has been considered but is not favoured. It would involve the Council establishing an internal project team to complete the work. There are variations on this theme, including the establishment of a working group or employing external consultants to assist with the research and fundraising.

#### ***Benefits***

- Administratively the simplest to set up and operate (consultation not required; no establishment costs)
- Tax efficient (although no tax issues have been identified)
- Lowest cost: able to utilise existing Council resources; no additional governance or compliance costs (e.g. for monitoring and reporting)
- Does not restrict future options

#### ***Disadvantages***

- Fundraising efforts will be hampered
  - External agencies reluctant to give funding to the Council
  - Creates an expectation that the Council will “foot the bill”
- Some difficulties in retaining focus due to diverse range of activities undertaken

#### ***Contribution to community outcomes***

The Council has not yet established its community outcomes (as defined under section 91 of the LGA). Until these are established, it is considered appropriate to refer to the outcomes listed under relevant key achievement areas in the Council’s Annual Plan.

The ultimate goal for the project is the establishment of an Indoor Stadium. This will contribute to increasing the level and quality of participation of Wellington residents in a number of sports. Through this, it will contribute to the following outcomes:

- Recreation opportunities (provision of quality infrastructure)
- Events and identity (contributing to economic prosperity)

This proposal is not about the operation of the Indoor Stadium, but is considering the most appropriate governance structure for fundraising and planning for the Indoor Stadium. It is assumed that the better the governance that can be applied, the greater will be the prospects of successfully achieving the goals and outcomes for the Indoor Stadium.

Each option is considered to offer broadly the same contribution to achieving these outcomes.

#### ***The impact on the Council***

The impact on the Council is neutral, when compared to the other options. Support from the Council will be provided under each of the options up to an equivalent level. This level of funding and support will not have a material effect on Council’s ability to meet its present and future needs.

### ***Any other relevant matters***

The Council will expect to have a similar involvement in the project, regardless of its form.

### **3.3 Wellington Regional Stadium Trust (or another existing CCO) manage the project**

This option has been considered but is not favoured. It would involve the Council negotiating a suitable arrangement with the Wellington Regional Stadium Trust (WRST) to undertake the project. Current court proceedings involving IRD and WRST, in regard to WRST's tax exempt status may have a significant impact on their fundraising ability for the Indoor Stadium. This creates uncertainty in the short term that is not desirable.

#### ***Benefits***

- WRST is in a related business – understands the requirements and has some established relationships
- It is the preferred site for the proposed Indoor Stadium (although this could also be perceived as a potential conflict of interest)

#### ***Disadvantages***

- Current court proceedings
- Some difficulties in retaining focus due to need to run the Stadium
- Insufficient resources (financial and personnel) and would need to incur additional cost if taking on the project
- Greater Wellington Regional Council would have to agree to this undertaking (in accordance with the Trust and funding deeds)
- ANZ Bank would have to agree to this undertaking (due to covenants)

#### ***Contribution to community outcomes***

The Council has not yet established its community outcomes (as defined under section 91 of the LGA). Until these are established, it is considered appropriate to refer to the outcomes listed under relevant key achievement areas in the Council's Annual Plan.

The ultimate goal for the project is the establishment of an Indoor Stadium. This will contribute to increasing the level and quality of participation of Wellington residents in a number of sports. Through this, it will contribute to the following outcomes:

- Recreation opportunities (provision of quality infrastructure)
- Events and identity (contributing to economic prosperity)

This proposal is not about the operation of the Indoor Stadium, but is considering the most appropriate governance structure for fundraising and planning for the Indoor Stadium. It is assumed that the better the governance that can be applied, the greater will be the prospects of successfully achieving the goals and outcomes for the Indoor Stadium.

Each option is considered to offer broadly the same contribution to achieving these outcomes.

### ***The impact on the Council***

The impact on the Council is neutral, when compared to the other options. Support from the Council will be provided under each of the options up to an equivalent level. This level of funding and support will not have a material effect on Council's ability to meet its present and future needs.

### ***Any other relevant matters***

The establishment process is very similar to that which was used for the WRST, which means the WRST board and management would have some prior expertise.

The current IRD proceedings create uncertainty over WRST's ability to achieve the desired outcome, when compared to other options.

## **4. Funding of the proposed Development Trust**

The operating cost is estimated to be \$166,000 in 2005/06, with this funding to be revisited in the following years. The Trust would be expected to source external funding for the operating expenses, through a mixture of grants, sponsorship and donations<sup>5</sup>.

Funding would be provided for project management, marketing, communications and fundraising, governance and meeting expenses, support services, and specialist advice (architects, quantity surveyors).

## **5. How Would the Development Trust operate?**

- It is proposed that the new trust is established as a charitable trust. The Trust would work with key stakeholders, such as the Council and the principal users. Its objects are as noted in section 2 and include:
  - Prepare a detailed business case for presentation to the Council and other key stakeholders;
  - Identify and secure external funding through a fundraising campaign;
  - At a time stipulated by the Council, and as recommended in the business case prepared by the Trust, to hand over responsibility for the project and any assets to an existing entity or to a new entity.
- It is proposed to have up to eight trustees on the new Trust – all appointed by WCC. Candidates will be selected that offer appropriate skills and that broadly represent the key stakeholders.
- It is proposed that the appointed Trustees would not receive any remuneration.
- The proposed new Trust will be a Council-Controlled Organisation and subject to the establishment, governance and accountability provisions set out at Part 5 of the Local Government Act 2002. The trust would be required to report to the CCO Performance Subcommittee.
- Assuming the proposal is adopted and the documentation finalised in time the new Trust will become effective from 1 July 2005.

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<sup>5</sup> A Council contribution will be considered as part of the Draft Annual Plan deliberations. A grant of \$96,000 has been recommended, but is subject to approval by that process.

## **6. Process Required to Establish the Development Trust**

The steps required to establish the new Trust are:

- A special consultative process must be completed and the Council must consider any submissions made on this proposal before making a decision to adopt this proposal.
- The Inland Revenue Department and the Charities Commission (in due course) will be required to approve the draft Trust deed to confirm the Trust's charitable status before the trust is established.
- Development of terms of engagement between the new trust and the Council.
- Recruitment and appointment of Trustees.

## **7. Conclusion**

The proposed Indoor Stadium would be a major asset for Wellington, and would help to address a shortage of quality indoor facilities. However it will require a significant commitment of time and money from all the key stakeholders. The Council is proposing the establishment of the Wellington Indoor Stadium Development Trust (a charitable trust) to take the lead role in achieving this goal.

## Appendix II Detailed Action Plan

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<b>Preliminary issues</b>	Consider and confirm the following: <ul style="list-style-type: none"> <li>• Preferred legal form</li> <li>• status under LGA 2002:             <ul style="list-style-type: none"> <li>– CCO/CCTO/CO</li> <li>– Decision making and consultation requirements (Note s.56, s.76-90 and s.97 LGA 2002)</li> </ul> </li> <li>• decide if special consultative procedure (refer s.56) is required and, if so, whether it will occur as part of the annual plan process or separately</li> <li>• any other legislative considerations</li> <li>• Obtain tax sign-off (if required)</li> </ul>	
<b>Consultation</b>	Prepare and review draft consultation plan and statement of proposal  Initiate and complete special consultative procedure  Council considers submissions received	
<b>If the Council decides to proceed:</b>		
<b>Draft New Trust Deed</b>	First draft Review <i>[Further drafts as required]</i> Prepare final version Check IRD/Charities Commission approval Confirm trustees details (names etc) Prepare agenda for first trustee meeting Arrange signing and hold first trustee meeting	
<b>IRD/Charities Commission approval of Trust's charitable status</b>  <i>* allow 2-3 months for IRD approval</i>	Send draft of trust deed to IRD/Charities Commission for preliminary comment (allow 1-2 months) IRD preliminary comments received Make any changes required, circulate and review Obtain final approval to Draft Send signed trust deed to IRD/Charities Commission Apply for IRD number, GST number and withholding tax exemption Receive formal confirmation from IRD re charitable exemptions	

<p><b>Recruit Trustees</b></p>	<p>Review WCC policy re appointment of trustees</p> <p>Review criteria required by draft Trust Deed and Appointment Policy</p> <p>Prepare job descriptions (if required)</p> <p>Advertise for Trustees (if required)</p> <p>Interview Trustees in accordance with WCC policy requirements</p> <p>Confirm appointment - WCC appointment confirmed and complete standard letter to trustees setting out basis of appointment</p>	
<p><b>Incorporation of trust board under Charitable Trusts Act</b></p>	<p>Check name</p> <p>Prepare application for incorporation and related documents</p> <p>Arranging signing by trustees</p> <p>Lodge for incorporation</p> <p>Receive certificate of incorporation</p> <p>Circulate certificate of incorporation to WCC, Trust, IRD</p> <p>Obtain common seal</p>	
<p><b>Matters for Trustees</b></p>	<p>Review and sign relevant documentation:</p> <p>Trust Deed</p> <p>any ancillary documents, i.e. deeds of amendment or deeds of assignment re contracts being transferred to the Trust</p> <p>Open bank account</p> <p>Appoint service providers:</p> <ul style="list-style-type: none"> <li>• accountant (if required)</li> <li>• legal (if required)</li> <li>• audit</li> </ul> <p>others</p> <p>Prepare first Statement of Intent in accordance with LGA 2002 requirements (if trust is a CCO)</p> <p>Prepare first business plan, strategic plan in accordance with requirements of management deed</p> <p>Review insurance requirements (if required)</p>	