

REPORT 2
(1215/52/01/IM)

**PROGRESS IN IMPLEMENTING AUDIT NEW
ZEALAND’S RECOMMENDATIONS**

1. PURPOSE OF REPORT

To update the Subcommittee on progress in implementing the recommendations contained in the various Management Letters Audit New Zealand have forwarded to the Council.

2. RECOMMENDATIONS

It is recommended that the Subcommittee:

1. *Receive the information.*
2. *Note the progress made in implementing the recommendations.*

**3. SUMMARY OF “MOVEMENTS” IN RECOMMENDATIONS
SINCE THE LAST REPORT**

REPORT	DATE	OPENING BALANCE	NEW ISSUES	IMPLEMENTED ISSUES	OUTSTANDING ISSUES
A: 1998/99 Final Audit	29 March 2000	2	-	-	2
Total		2	-	-	2

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MANAGER, FINANCIAL ACCOUNTING

APPENDIX ONE

IMPLEMENTATION OF AUDIT NEW ZEALAND'S MANAGEMENT LETTER RECOMMENDATIONS:

POSITION AS AT DECEMBER 2005

A 1998/99 FINAL AUDIT (Letter Dated 29 March 2000)

Ref	Issue	Responsibility	Priority	Current Status	Original Due Date	Implemented or Due Date
5.4	Trusts					
	<p>Accounting, Tax and Legal Treatment</p> <p>There has been considerable ongoing debate in regard to the appropriate accounting, tax and legal treatment of Trusts which have been established by Local Authorities in order to further community interests and local development:</p> <p>Council has previously sought advice on the Local Government and Income Tax definitions of a LATE and whether the Trusts would fall into these categories under the new legislative definition. Initial advice was that they would not, so long as the Trusts did not own operating companies. However recently there has been some conflicting opinion on this matter and an IRD ruling in regard to the status of the St James Theatre Trust, which suggests that the Trust is a LATE. However, we understand that grounds exist for Council to dispute this ruling.</p> <p>The issue is not confined to Wellington City</p>	Wayne Maxwell	Medium	<p>The issue of whether the Council's various Trusts constitute LATEs is significantly affected by the differing opinions on the subject. Differing opinions have been provided based on legislative requirements, income tax provisions as well as accounting requirements. This is complicated by changing requirements as a result of the enactment of the Local Government Act 2002 (LGA2002) and the issuance of new accounting standards in this area.</p> <p>The enactment of the LGA2002 introduced Council Controlled Organisations (CCOs) and Council Controlled Trading Organisations (CCTOs) in place of LATEs. LGA2002 includes consequential amendments to the Income Tax Act 1994 to reflect the change from LATEs to CCOs.</p> <p>The Trust, in conjunction with WCC and WRC made application to the High Court for a declaratory judgement on the Trust's status. This application was heard in the High Court in June 2004. In July 2004, the High Court declared that the Trust was not a CCTO and that Part 5 of the Local Government Act 2002</p>	30/4/00	

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	<p>Council and is one which needs to be addressed for the sector. We understand that Council is working with the Audit New Zealand tax team and the Office of the Auditor General to reach consensus on the issue.</p> <p>We will be liaising with the OAG and our sector specialists to ensure that the results of the consultation are consistent with views across the sector and with the intention of seeking a resolution to the issue which will enable Council to plan for the future structure and relationships with similar bodies.</p>			<p>(which deals with Council-controlled organisations) did not apply to the Trust.</p> <p>The IRD has subsequently appealed this decision. The case was heard in the Court of Appeal by a panel of three judges on 28 June 2005. The Court of Appeal announced their decision on 6 September. They found that the Stadium Trust is established under the Empowering Act, and as such is excluded from the Local Government Act 2002 (LGA), and specifically from the CCO (and CCTO) accountability regime.</p> <p>We are currently working through the judgement to determine the implications for the Trust and Council's other CCOs. We will keep the Subcommittee informed of further developments.</p>		
	<p>Interest on Loans to Trusts</p> <p>A related issue which needs to be considered is that Council has entered into various loan agreements with several Trusts where no interest is charged. Should the Trusts be deemed to be LATEs under the new legislation, then Council will have breached the requirements of the Local Government Act (s.594 ZPA) which states that loans to a LATE must be made on a commercial/arms length basis.</p>	Wayne Maxwell	Medium	<p>Section 63 of the Local Government Act 2002 (Restriction on lending to council-controlled trading organisation) replaces section 594ZPA of the Local Government Act 1974. The section is essentially the same as s594ZPA, replacing the term "local authority trading enterprise" with "council-controlled trading organisation."</p> <p>The remaining issue relates to the interest free loan to the WRST. If the Trust was deemed to be a CCTO by the High Court, then section 63 would apply to the \$15 million loan from the Council. As noted previously, the High Court declared that the Trust was not a CCTO and that Part 5 of the Local Government Act 2002 (which deals with Council-controlled organisations) did not apply to the Trust. The Court of Appeal has confirmed the High Court judgement. We are currently working through the Court of Appeal judgement to determine the implications for the Trust and Council's other CCOs.</p>	30/6/00	

Supporting Information

1) Strategic Fit / Strategic Outcome

The report supports Council's overall vision of Creative Wellington – Innovation Capital by ensuring that issues raised by Audit NZ are appropriately reported, monitored and resolved. This strengthens the internal control environment.

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

The report has no specific Annual Plan reference. There is no long term financial impact arising from the report.

3) Treaty of Waitangi considerations

There are no specific Treaty of Waitangi considerations.

4) Decision-Making

There are no significant decisions required by the paper.

5) Consultation

a) General Consultation

There are no parties significantly affected by this paper.

b) Consultation with Maori

Maori are not significantly affected by this paper.

6) Legal Implications

This report has no specific legal implications.

7) Consistency with existing policy

This report is consistent with existing policy.