

**REPORT 1**  
 (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. *Note the content of the 2004/05 Final Audit New Zealand Management Letter.*

**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                  |
| B: 2002/03 Final Audit | 12 September 2003 | 1               | -          | 1                  | -                  |
| <b>Total</b>           |                   | <b>3</b>        | <b>-</b>   | <b>1</b>           | <b>2</b>           |

The Audit New Zealand management letter for 2004/05 is currently being finalised and will be tabled at the Subcommittee meeting on 16 September 2005.

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 MANAGER, FINANCIAL ACCOUNTING

## Supporting Information

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

*The monitoring and reporting back of Audit New Zealand's recommendations forms part of the overall financial accountability framework and effectively discharges the Council's financial management obligations under the Local Government Act 2002..*

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

*There is no Annual Plan or long term financial impacts.*

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

*There are no Treaty of Waitangi considerations.*

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

*The Audit and Risk Management Subcommittee will monitor progress in implementing Audit New Zealand's recommendations. There are no decisions required by the Subcommittee.*

### **5) Consultation**

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

*There is no requirement for general consultation.*

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

*There is no requirement for consultation with Maori.*

### **6) Legal Implications**

*There are no legal implications arising from the report.*

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

*There are no existing policy implications. The recommendations in the report are consistent with the financial management obligations under the Local Government Act 2002.*

## APPENDIX ONE

### IMPLEMENTATION OF AUDIT NEW ZEALAND'S MANAGEMENT LETTER RECOMMENDATIONS:

#### POSITION AS AT SEPTEMBER 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 | <b>Trusts</b>   |                |          |  |                   |                         |
|     | <p><b>Accounting, Tax and Legal Treatment</b></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 Council and is one which needs to be addressed</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 (which deals with Council-controlled organisations)</p> | 30/4/00           |                         |

| Ref | Issue   | Responsibility | Priority | Current Status   | Original Due Date | Implemented or Due Date |
|-----|---|----------------|----------|--|-------------------|-------------------------|
|     | <p>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>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><b>Interest on Loans to Trusts</b></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           |                         |

**B 2002/03 FINAL AUDIT (Letter dated 12 September 2003)**

| Ref   | Issue   | Responsibility | Priority | Current Status   | Original Due Date | Implemented or Due Date |
|-------|---|----------------|----------|--|-------------------|-------------------------|
| 5.3.2 | <b>Wellington Cable Car Limited</b>   |                |          |  |                   |                         |
|       | <p>The Council's 100% owned subsidiary Wellington Cable Car Limited (WCCL) is recorded at cost (\$7.4 million) in the Council's statement of financial position. WCCL has negative retained earnings of \$3.2 million largely as a result of the write-down of the overhead network. These accumulated losses have not been taken into account in determining fair value of the investment.</p> <p>In accepting this valuation, two matters have been taken into consideration:</p> <ul style="list-style-type: none"> <li>• materiality; and</li> <li>• the changed situation in regard to the overhead network.</li> </ul> <p>Greater Wellington have indicated support for extending the life of the network which means it is likely that in future periods a business valuation would replace this "lost" equity due to the extended life of the assets.</p> | Helen Rogers   | Medium   | <p>During the financial year ended 30 June 2000 WCCL began accelerating the depreciation on the trolley bus assets to reflect a change in the Directors' assessment of the useful life of these assets. Due to uncertainty over the continuation of the funding arrangement with Greater Wellington Regional Council (WRC) in respect of the trolley bus overhead network beyond 30 June 2004, the life of the assets was deemed to end at this point. As at 30 June 2004 the trolley bus assets had a net book value of \$0 in the WCCL accounts. As a result, the equity of the company fell to \$3.4 million as at 30 June 2004.</p> <p>During this period, the Council's investment in WCCL has been maintained at the initial cost of \$7.4 million as, in the Council's view, there has been sufficient uncertainty over whether the value of the assets would be restored.</p> <p>As at 30 June 2005, Council Officers again assessed the Council's investment in WCCL to determine whether there were grounds for impairment of our investment.</p> <p>Council Officers determined that the position in respect of future funding was less certain than 12 months previously. The operating contract with WRC expired in January 2005, and a new contract had not been agreed. At 30 June 2005, there was no certainty of any future income stream and no contract currently in place. Therefore the trolley bus overhead network had no value based on future income streams.</p> <p>As the situation at 30 June 2005 was considerably less favourable than prior years, it could no longer be considered probable that the equity in the company would be restored. Therefore, the investment was written down to a level reflecting the underlying net assets of the company at 30 June 2005.</p> | 30/6/04           | Implemented             |