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Committee Policy, Finance and Strategy
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Stadium Trust: Half Year Report

1. Purpose

To receive the Stadium Trust half year report for the period 1 July 2002 to 31 December 2002 (refer **Attachment 1**).

2. Background

The funding deed signed by the Wellington Regional Council, Wellington City Council and the Wellington Regional Stadium Trust requires the Trust to report to the two settlors (WRC/WCC) each six months. In conjunction with the receipt of the report each six months, the Stadium Trust also provides an oral briefing to give Councillors the opportunity to ask any questions relating to the Stadium. No date has yet been set for this briefing.

3. Comment on the half year report to 31 December 2002

The attached report reflects further positive news from the Stadium Trust.

The Stadium Trustees report that they have exceeded budget in the first six months of 2002/03 while holding an excellent calendar of events. A net operating surplus of \$487,000 has been recorded compared with a budget for the six month period of \$235,000. However, with some planned events now not taking place in the second half of the year the Trust expects to be close to its full year budgeted surplus of \$1.5 million at 30/6/03.

The Stadium Trust notes in the attached report that while the rates issue has now been resolved, the status of the Trust as a LATE (Council Controlled Trading Organisation under the new Local Govt Act) remains uncertain. We had hoped that the new Local Govt Act would clarify the situation but this has not eventuated. It appears sensible, therefore, that the previously agreed route of seeking a declaratory judgement in the High Court should now be pursued by the Council, in conjunction with WCC and the Stadium Trust.

The matter on which the High Court should be asked to adjudicate on is “does the WRC Stadium Empowering Act create its own governance code for the Stadium Trust and thereby render the Local Govt Act irrelevant in this case?”

- If the answer is yes then the two Councils will be free to retain the \$40 million advances to the Stadium Trust as interest free loans. It will also make it difficult for the IRD not to reinstate the Stadium Trust’s tax exempt status, as the IRD removed the Trust tax exempt status on the basis that it considered the Stadium Trust to be a LATE. If the Local Govt Act does not apply in this case the Trust cannot be a LATE (Council Controlled Trading Organisation).
- If the answer is no the High Court will in effect be saying that the Local Govt Act does apply to the Stadium Trust and the settlors will then have to determine the next steps that they wish to take.

The Local Govt Act does contain a provision whereby the Governor-General may exempt an entity from being a Council Controlled Organisation under the Act. If a successful application for exemption were to be made, the issue of interest on Council advances would be resolved (i.e. the two Councils could retain the \$40 million advances as interest free). However, an exemption from the Governor-General unfortunately does not equate to a tax exemption from the IRD! In other words, the Stadium Trust would still be considered by the IRD to be taxable.

While not an ideal outcome, this would not represent a major issue in the short to medium term as the Stadium Trust continues to accumulate tax losses and is not expected to utilise all of its tax losses, and thereby start paying tax, for at least another five years.

If this scenario eventuated the settlors would still have the option in future of changing the Trust Deed so that the two Councils did not appoint the majority of Trustees. This would ensure the Stadium Trust would not be a LATE (Council Controlled Trading Organisation). While not an attractive option at this time, this could be reconsidered at a later time if considered appropriate.

External debt remains at around \$31 million at 31 December 2002, indicating that any prospect of repayment of Council’s advance to the Trust remains many years away (as all external debt must be repaid first).

Looking forward, the Trust is expecting 2003/04 to be a challenging year, particularly in relation to the event calendar as a result of the loss of the rugby world cup.

4. Communications

It is expected that the Stadium Trust’s positive results will continue to be well reported by the media.

5. Recommendations

That the Committee recommend that the Council:

- (a) receive the report and note its contents.*
- (b) approve seeking, in conjunction with the Wellington City Council and the Wellington Regional Stadium Trust, a declaratory judgement in the High Court in respect of the status of the Stadium Trust.*

Report prepared by:

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Attachment 1: Stadium Trust: Half Year Report 2002