Public Excluded

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Report to the Policy and Finance Committee
from Greg Schollum, Chief Financial Officer

Stadium Tax - Update

1. Purpose

To update the Committee on the tax situation of the Wellington Regional Stadium Trust.

2. Public Excluded

Grounds for the exclusion of the public under Section 48 (1) of the Local Government Official Information Act 1987 are:

> *That the public conduct of the whole or relevant part of the meeting would be likely to result in the disclosure of information for which good reasons for withholding exists, i.e. to carry on commercial negotiations.*

3. Background

Councillors will recall the discussion on taxation of the Stadium Trust which took place at the Policy and Finance Committee meeting on 10 December 1998. (Refer Report 98.516.) The potential for taxation arose from the Government's intention to legislate that all entities meeting the revised definition of a LATE (Local Authority Trading Enterprise) will be taxable with effect from 1 April 1999. (i.e. there would be no charitable exemptions for any entity meeting the LATE definition.)

At that time there were concerns that the potential implications of the Stadium Trust being caught in the tax net were threatening the viability of the project, and required resolution before the Trust would be in a position to refinance its loan with the bank.

Since 10 December there have been several developments:

- further work was completed by the Stadium Trust's tax advisors as to the tax impact on the Stadium project in the event that the Trust became taxable. This work indicated that the impact of taxation was much less than first anticipated and that it was no longer life threatening for the project.

- meetings were held with Ministers Birch and Bradford along with their advisors in an attempt to continue the Trust's tax exempt status beyond 1 April 1999 by amending the Wellington Regional Council (Stadium Empowering) Act 1996. This was largely unsuccessful as the Government was not keen to create any exceptions to the rule. However, the Ministers did agree to try and further assist the Trust in respect of deferring the outstanding $3.8 million due from the Trust to the Crown for the Railyards land. The Ministers also agreed to lend their support to an application to the Lotteries Grants Board for a further $2 million (as was originally budgeted for by the Trust).

- The Trust's cash flow forecasts have been updated to incorporate taxation and the bank has indicated that the project remains bankable. (At the time of writing this report the bank refinancing had not been completed due to minor delays in finalising the banking documentation, but indications are that the bank is comfortable with the Trust's revised cashflows.)

- The Stadium Trust (with some assistance from WCC and ourselves) has continued to look at options for mitigating the impact of taxation, should it indeed become taxable from 1 July 1999, as it appears.

  There appear to be three main options still available:

  (1) The Stadium Trust is likely to be deemed to be a LATE (and therefore have its tax exempt status removed) because it itself controls a LATE. This is due to the current structure of the Trust owning a company which has been set up to operate the Stadium once it opens.

  Professional advice received suggests that the current structure has a large bearing on the Stadium Trust being considered to be a LATE.

  The Trust is currently reviewing the way it is structured.

  (2) The taxable income of the Trust could be eliminated if both Councils (WCC and WRC) charged interest on Councils' advances (currently interest free). This would mean the Stadium Trust would

not only mitigate paying tax, but would in all likelihood build up significant tax losses over time.

However, the interest income charged would be assessable to WCC and WRC. The question would then be "how collectable was the interest?" and both Councils would in all likelihood need to write off the interest as non collectable. This write off would be a deduction in the tax calculation of both Councils. In addition, in the case of WRC, we have interest to deduct as we borrowed from the National Bank the full $25 million in order to on-lend to the Stadium Trust. (This is not the case for WCC as they did not borrow specifically for the purpose of onlending to the Trust.) Therefore, the charging of interest on Council advances would in all likelihood produce tax losses for the Trust, a tax neutral position for WCC and tax losses for WRC.

However, there are factors other than taxation which would need to be considered if interest was to be charged:

- The Trust would record large losses in its financial accounts which would make the project appear to be a disastrous financial failure.

- The Councils would need to record income from the advances and large bad debt write-offs each year which again is undesirable.

Nevertheless, this remains an option should option 1 not prove to be successful but will require significantly more investigation by both Councils to confirm the overall net financial effect on each party. In addition both Councils would need to agree, as joint settlors, to charge interest.

(3) The Councils (WCC,WRC) could forego the right to appoint the majority of Trustees. As earlier indicated in a letter from the Council Chairman to the Trust, this is not considered to be a realistic option for as long as there remains a substantial portion of the Council's advance of $25 million outstanding.

4. Analysis of Options

Although I have listed three options, the options are not mutually exclusive and in effect represent different escalating strategies which could be employed to ensure the interests of the Stadium Trust and the Region's ratepayers are protected.

5. Recommendation

That the report be received and the contents noted.

GREG SCHOLLUM
Chief Financial Officer