



ANNUAL REPORT 2007

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# Liability Riskpool | Mission Statement

Riskpool achieves this by:

- > Assisting and encouraging Local Government to take greater collective responsibility for managing liability risks.
- > Facilitating group support and the dissemination of collective knowledge, expertise and experience.
- > Proactively identifying, analysing and responding to emerging liability issues with practical and meaningful risk management advice and assistance.
- > Providing a complete and balanced service to all Members, incorporating scheme administration, risk management and loss control advice, and claims management services.
- > Providing a meaningful and practical risk management and loss control service which is effective, accountable and designed to meet the needs of Local Government.
- > Providing a claims management service which is equitable and achieves financial efficiency whilst promoting better public relations between local authorities and their communities.



## Chairman's Report

The result for 2007 shows a combined deficit in the Fund of \$2,233,689. Clearly this is a significant development over our 2006 result and one which the Board has acted upon immediately. Thus, events post balance date have a significant bearing on our reporting stance with this result.

Since the preparation of the June 2007 accounts there have been two significant events. The first has meant that the Board now has good reason to believe that the provision of \$1 million for bad debts in these accounts is no longer required. The second arises as a result of the Board's recent decision (announced to the membership late last year) – that with effect from 1 February 2008 all claims arising through the Weathertight Homes Resolution Service will be subject to a minimum excess of \$50,000.

The effect of these two events, combined with Riskpool's ongoing good results in claims and risk management, is that we anticipate this will hopefully be the last set of accounts where Riskpool will show a deficit as a result of leaky building exposures. This is because the new minimum excess will remove the bulk of the contingent liability that our actuaries had factored into our claims provisions.

Of the 7,669 notifications of claims or circumstances that might give rise to claims that Riskpool has received in its first ten years of operation, I would like to highlight three that have recently been settled:

- **Dicks v Waitakere City Council:** This was a 'leaky building' claim. While sympathetic to the situation that Mrs. Dicks was in, it was nevertheless important that the case was run. Through this case it has been established that a builder can no longer assume it is safe to hide behind the limited liability company used for the building contract when it comes to being responsible for making good shoddy building work.
- **Tindall & Ors v Far North District Council:** Far North oyster farmers collectively claimed \$12 million against the council for losses when their oyster farms were closed down. They claimed the council's sewage treatment plant discharged contaminated effluent. The Court found that the council had not been negligent and costs were awarded to the council.
- **Cornerstone Group v Rodney District Council:** Cornerstone agreed to pay \$42 million for land that the council was considering rezoning. However, the council had not taken into account some adverse information about traffic flows and amended its position on the rezoning. Following extensive written submissions with the High Court claiming that no duty of care was owed to Cornerstone by the council, the plaintiffs withdrew their claim for \$14 million and costs were awarded to the council.



**Michael Ross**  
CHAIRMAN

What these last two cases demonstrate is that large claims are not predictable and can affect any council. The resolution of these claims in favour of Riskpool is testimony to the excellent work done by the Scheme Manager and Scheme Solicitor. Note that it is not just about the money that is tied up in these claims, it is also about avoiding unwanted precedents for future claims. Thus even councils with few or no claims with Riskpool are still very much gaining from Riskpool's existence. Indeed this is why we established the pool in the first place. Our foundation reason for being remains as relevant today as it was on the day we started the pool.

It is thus with regret that I report that four councils chose not to renew their membership for fund year 11. We continue to communicate with those councils and trust that our performance and our unique cover protection will encourage them to reconsider their position.

A very important function of Riskpool is the provision of risk management advice, led by Jardine Lloyd Thompson. By centralising risk management and allowing councils to learn from one another, claims are not only reduced, but information is shared and better risk management processes promoted throughout the sector. Thus member councils and their ratepayers are benefiting from a service unavailable anywhere else in the insurance market.

In August 2006, with Riskpool in its tenth year of operation, a governance review was commenced using two independent advisors, Mr. Anthony Ractliffe and Mr. Richard Westlake. Changes to Riskpool's trust deed were finalised and approved on 22 June 2007. A copy of the new trust deed is included with this year's report and accounts.

Riskpool is a fund designed for local government and owned exclusively by its members. However it could not operate without the important work carried out by its advisors. I would like to formally thank, on behalf of the Board, the Scheme Manager (Jardine Lloyd Thompson), the Scheme Solicitor (Heaney & Co) and the Fund Manager (Civic Assurance) for their ongoing and valuable work for Riskpool, its members, and the local government sector.



Michael Ross  
Chairman

## LGMFT BOARD 2006-07



**R Lineham**  
**T Sole**

**B Taylor**  
**M Ross**

**D Sheard**  
**R Andrew**



# Scheme Manager's Operational Overview

Jardine Lloyd Thompson

The 2006-07 year of account saw record volumes of litigation against local authorities managed by Riskpool. Of course the number of claims registered with the Weathertight Homes Resolution Service (WHRS) and Weathertight Homes Tribunal (WHT) contributed significantly towards those claims requiring active defence. We manage these claims with a national view to ensure that the best result for Local Government is achieved.

Media attention to certain claims has at times been unhelpful as ordinary steps in the litigation process are viewed as being unpopular. Notwithstanding this, we must continue to manage claims in a prudent manner so as to ensure that poor precedents are not set, or at least the effect of them if set is minimised. This is important for Local Government nationally and for the integrity of Riskpool as Local Government's mutual liability fund.

We have noted a distinct change in the litigation environment for building defect claims. They are becoming increasingly more difficult to resolve and more frequently the Council is the only judgement worthy defendant, with the other usual parties either impecunious or wound-up. Notwithstanding that, we have achieved orders against a director of a building company in liquidation personally. Additionally, the changes to the WHRS/WHT, and in particular the very short time-frames for mediation and procedural steps in adjudications has made the management of these claims more challenging.

Riskpool's Board continues to carefully monitor the development of weathertightness claims and take steps where necessary to ensure that inter-member equity is maintained. At the last renewal, Riskpool's Board resolved to introduce a "multi-unit" exclusion and/or sub-limit of cover for weathertightness claims.

We have had a good measure of success defending a variety of claims in the Courts which has lead to improvements to the common law as it relates to local authorities. Of particular note were the judgements in *Tindall & Ors v Far North District Council* and *Te Mata Properties Ltd & Ors v Hastings District Council & Ors*.

In the Resource Management Act area we have begun to see the impact of *Bella Vista Ltd v Western Bay of Plenty District Council* take effect and whilst the number of notifications has not reduced, the precedent set in that case is discouraging would-be plaintiffs from pursuing their claims.

Our Building Control risk management assessments continued during the year. However we are conscious of the demands placed on Councils by Building Act accreditation and have spent more time reviewing other higher risk functions of our member Councils.

More generally, we have noticed the benefits of good risk management practice emerge in non-building defect claims. Improved documentation and good planning practices has been beneficial in resolving a range of types of claim.



**Paul Carpenter**  
SCHEME MANAGER



**Tim Clarke**  
ASSISTANT SCHEME  
MANAGER

# Risk Management

The year under review, as expected, brought with it a number of challenges for our members, notwithstanding the significant burden placed on Councils over the past year due to the requirements of the Building Act 2004. We wish to record our appreciation to all our members for their ongoing co-operation.

Building control issues have continued to dominate our time and we expect that trend to continue with the rise in building defect claims. We are pleased to report however that we have seen an increase in good risk management practices enabling us to provide better defence and resolution of claims.

We have noticed that risk management practices have improved in general and we believe that this has reduced claims across a number of claim categories. It is apparent that Councils are better documenting their decision making process and we are aware of cases where good quality documentation has had a positive impact on the result of a claim, particularly in the area of Resource Management Act claims.

There has been an increase in the number of Land Information Memoranda (LIM) claim notifications that have progressed from being cautionary advice only to active claims, particularly over the last five years. This we think is due, in part, to the increase of LIMs being issued because of the buoyant housing market together with a greater awareness by purchasers of the importance of obtaining a LIM.

The mandatory detail required to be included in LIMs detailed in section 44A(2) of LGOIMA has been amended as a result of the Weathertight Homes Resolution Services Act 2006. Section 44A(2)(ea) of LGOIMA now requires that Councils include information received by it from the Department of Building and Housing and the Weathertight Homes Tribunal in relation to dwelling weathertightness claims. We understand that updating and maintaining Council records in a manner that enables the information to be readily available to staff processing LIM applications is in some cases requiring significant effort and can be particularly time consuming, especially for those Councils with a large number of claims.

For the reasons noted and because there has also been a steady number of calls to our help desk regarding LIM issues, we are in the process of developing a LIM assessment and will commence roll out of that assessment together with the remaining building control assessments during 2008.

We would like to remind our members that we continue to operate our help desk and we welcome any liability, risk management or claims management enquiry at any time.

We look forward to working with you during the coming year.

**Raelene James**  
RISK MANAGEMENT  
CONSULTANT



## Claims Management

7,669 notifications of claims or circumstances that might give rise to claims have been received and managed since 1997.

The following table summarises claim notifications over the last ten years.

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	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07
<b>Number of Members</b>	57	70	74	76	79	80	81	83	82 *	82 *
	* Banks Peninsula District Council and Christchurch City Council amalgamated.									
<b>Cause of Claim/Notification</b>	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07
Building Control Matters	176	255	212	173	177	629	398	410	346	365
RMA Matters	81	159	86	98	76	90	78	58	38	31
Flooding/Blocked Drains	57	90	68	64	58	40	43	37	33	30
Drains										
LIM's	51	57	39	46	36	75	62	79	59	61
Landslip/Subsidence	34	42	28	32	26	27	46	27	38	10
Sewage Discharge	11	19	12	15	10	14	16	19	16	23
Falling Trees	10	12	11	9	8	6	17	15	5	13
Defamation	7	9	6	5	4	1	4	3	3	4
Other	223	212	219	234	290	196	149	178	156	174
<b>Total</b>	<b>650</b>	<b>855</b>	<b>681</b>	<b>676</b>	<b>685</b>	<b>1,078</b>	<b>813</b>	<b>826</b>	<b>694</b>	<b>711</b>
<b>Claims per Member</b>	<b>11.4</b>	<b>12.2</b>	<b>9.2</b>	<b>8.9</b>	<b>8.7</b>	<b>13.5</b>	<b>10.0</b>	<b>10.0</b>	<b>8.5</b>	<b>8.7</b>



It would seem that the peak of building defect claims occurred in 2002-03 with the initial establishment of the WHRS. However, rather than progressively reducing with time, these claims appear to have reached a plateau. This would suggest that it may be many years before the extent of the weathertightness issue will be known with any certainty. It would therefore seem that our decisions to run litigation such as *No Three Meade Street Ltd v Rotorua District Council* and *Te Mata Properties Ltd & Ors v Hastings District Council & Ors* were correct given the plateau rather than decline in the incidence of building defect claims.

In *No Three Meade Street Ltd v Rotorua District Council* it was held that the Council did not owe a duty of care to a commercial property owner. The Court in *Te Mata Properties* grappled with the commercial property owner issue and found that in practice the distinction between commercial property owners and residential property owners is not always clear cut. Ultimately the Court held that the Council did not owe a duty of care to plaintiffs who are not vulnerable. The rationale for that is that these parties can otherwise protect their own interests by way of contractual warranties, the engagement of clerks of works and so forth. That fact that they choose not to, should not mean that the responsibility for protection should fall to the Council.

In October the judgement in *Tindall & Ors v Far North District Council* was delivered. This was a claim that alleged that sewage discharges from the Council's sewage treatment plant caused contamination of the plaintiffs' oyster farms which were

ultimately closed down by the health authorities and they sought \$12m in damages. Whilst the plaintiffs' case failed on causation, the Court went so far as to say that if the Council had created a nuisance, the harm suffered must be reasonably foreseeable. This case will be important in the future defence of nuisance claims which are commonly made against both regional Councils and territorial authorities following the failure of Council infrastructure and subsequent third party property damage and consequential losses.

Land Information Memoranda claims have increased over the last five years, probably reflecting the property market during that time. Whilst the management and resolution of these claims has improved due to ongoing improvements to Council procedures we remain a little concerned with the amendment to section 44A(2) of LGOIMA by the WHRS Act 2006. This amendment requires Councils to include information on LIMs regarding the registration and progress of claims with the WHRS/WHT. We believe that this is a particularly onerous requirement which will be challenging to give practical effect to. For that reason it is an issue that is the subject of specific risk management advice from Riskpool.

Whilst the numbers of other claim categories would appear to be consistent, the management and resolution of claims has been improved due to much improved documentation, Council procedures and planning as it relates to Council owned assets.

**John Golder**  
CLAIMS ADMINISTRATOR



**Aubrey Hann**  
CLAIMS ADMINISTRATOR



**Greg Morton**  
CLAIMS ADMINISTRATOR



**Liz Lang**  
CLAIMS ADMINISTRATOR



## Audit Report

The Auditor-General is the auditor of the New Zealand Mutual Liability Riskpool (the “Scheme”), comprised of Fund 1 to Fund 11 (the “Funds”). The Auditor-General has appointed me, Graeme R Mitchell, using the staff and resources of Deloitte, to carry out the audit of the financial statements of the Funds, on his behalf, for the year ended 30 June 2007.

### TO THE READERS OF NEW ZEALAND MUTUAL LIABILITY RISKPOOL'S FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2007

#### Unqualified Opinion

In our opinion the financial statements of the Fund's on pages 10 to 23:

- > comply with generally accepted accounting practice in New Zealand; and
- > fairly reflect:
  - the Funds' financial position as at 30 June 2007; and
  - the results of their operations and cash flows for the year ended on that date.

The audit was completed on 26 November 2007, and is the date at which our opinion is expressed.

The basis of our opinion, which refers to the going concern basis on which the financial statements have been prepared, is explained below. In addition, we outline the responsibilities of the Trustee and the Auditor, and explain our independence.

#### Basis of Opinion

We carried out the audit in accordance with the Auditor-General's Auditing Standards, which incorporate the New Zealand Auditing Standards.

We planned and performed the audit to obtain all the information and explanations we considered necessary in order to obtain reasonable assurance that the financial statements did not have material misstatements, whether caused by fraud or error.

Material misstatements are differences or omissions of amounts and disclosures that would affect a reader's overall understanding of the financial statements. If we had found material misstatements that were not corrected, we would have referred to them in our opinion.

The audit involved performing procedures to test the information presented in the financial statements. We assessed the results of those procedures in forming our opinion.

Audit procedures generally include:

- > determining whether significant financial and management controls are working and can be relied on to produce complete and accurate data;
- > verifying samples of transactions and account balances;
- > performing analyses to identify anomalies in the reported data;
- > reviewing significant estimates and judgements made by the Trustee;

- > confirming year-end balances;
- > determining whether accounting policies are appropriate and consistently applied; and
- > determining whether all financial statement disclosures are adequate.

We did not examine every transaction, nor do we guarantee complete accuracy of the financial statements.

We evaluated the overall adequacy of the presentation of information in the financial statements. We obtained all the information and explanations we required to support our opinion above.

### Emphasis of Matter

#### *Going Concern*

In forming our unqualified opinion, we note that the financial statements of the Funds have been appropriately prepared on a going concern basis. Note 2 outlines that the going concern basis is appropriate because the Trustee is able to levy the members of the Funds to cover any shortfall in equity in any Fund under the Terms of the Trust Deed.

In forming our unqualified opinion, we also note the uncertainties around reinsurance recoveries as stated in Note 2. If the reinsurers determined they were not liable for the recovery the financial statements for Fund 6 would be materially different from that reported at 30 June 2007.

### Responsibilities of the Trustee and the Auditor

The Trustee is responsible for preparing financial statements in accordance with generally accepted accounting practice in New Zealand. Those financial statements must fairly reflect the financial position of the Funds as at 30 June 2007. They must also fairly reflect the results of its operations and cash flows for the year ended on that date. The Trustee's responsibilities arise from the Public Finance Act 1989.

We are responsible for expressing an independent opinion on the financial statements and reporting that opinion to you. This responsibility arises from section 15 of the Public Audit Act.

### Independence

When carrying out the audit we followed the independence requirements of the Auditor-General, which incorporate the independence requirements of the New Zealand Institute of Chartered Accountants.

Our firm has provided tax support to the Fund's during the year. Apart from this, and other than in our capacity as auditor acting on behalf of the Auditor-General, we have no relationship with or interests in the Scheme.



Graeme R Mitchell

DELOITTE

ON BEHALF OF THE AUDITOR-GENERAL  
WELLINGTON, NEW ZEALAND

**Deloitte.**

# New Zealand Mutual Liability Riskpool

Statement of Financial Performance for the year ended 30 June 2007

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	Note	Fund No. 11 (07-08)	Fund No. 10 (06-07)	Fund No. 9 (05-06)		Fund No. 8 (04-05)		Fund No. 7 (03-04)	
		2007	2007	2007	2006	2007	2006	2007	2006
		\$	\$	\$	\$	\$	\$	\$	\$
<b>Revenue</b>									
Members' Contributions		-	8,609,539	-	7,469,934	-	-	250,000	-
Contribution to expenses from prior fund years		-	397,770	-	457,500	-	-	-	-
Direct Claims Expense	6	-	2,251,529	2,669,276	5,031,367	(315,419)	556,164	1,609,896	1,311,920
Future Claims Administration Expense	6	-	567,600	-	714,420	-	-	-	-
Reinsurance Expense		-	1,869,277	-	1,332,722	-	-	-	-
<b>Net Result for the Period</b>		-	<b>4,318,903</b>	<b>(2,669,276)</b>	<b>848,925</b>	<b>315,419</b>	<b>(556,164)</b>	<b>(1,359,896)</b>	<b>(1,311,920)</b>
<b>Investment Revenue</b>		-	353,638	306,353	339,882	252,956	319,857	68,661	217,922
<b>Total Revenue</b>		-	<b>4,672,541</b>	<b>(2,362,923)</b>	<b>1,188,807</b>	<b>568,375</b>	<b>(236,307)</b>	<b>(1,291,235)</b>	<b>(1,093,998)</b>
<b>Expenditure</b>									
Risk Management Programme		-	-	-	-	-	-	-	-
Scheme Managers Fees		-	1,154,228	28,540	1,174,000	-	-	-	-
Fund Managers Fees		-	246,474	-	185,350	-	-	-	-
Audit Fees		-	6,222	955	2,094	955	3,219	955	2,094
Other Fees Paid to Auditors		-	-	-	-	-	-	-	-
Consultancy		-	97,591	6,531	102,901	-	-	-	-
Meeting / Travel Expenses		-	15,477	-	12,885	(496)	-	(620)	-
Directors & Officers Liability Insurance		-	14,860	-	7,030	-	-	-	-
Legal Fees		-	78,885	-	29,124	-	-	-	-
Printing and Stationery		-	8,500	(159)	8,848	-	191	-	-
Sundry Expenses		-	530	-	287	-	-	-	-
Rebate Expense / Trust Income Distribution		-	-	-	-	-	-	-	-
Bad Debts	2	-	-	-	-	-	-	-	-
<b>Total Expenditure</b>		-	<b>1,622,767</b>	<b>35,867</b>	<b>1,522,519</b>	<b>459</b>	<b>3,410</b>	<b>335</b>	<b>2,094</b>
<b>Net Surplus/(Deficit) before Tax</b>		-	3,049,774	(2,398,790)	(333,712)	567,916	(239,717)	(1,291,570)	(1,096,092)
Tax Expense		-	1,006,426	(464,535)	-	(206,863)	(97,483)	(443,647)	(51,162)
<b>Net Surplus /(Deficit) after Tax</b>		-	<b>2,043,348</b>	<b>(1,934,255)</b>	<b>(333,712)</b>	<b>774,779</b>	<b>(142,234)</b>	<b>(847,923)</b>	<b>(1,044,930)</b>

This statement is to be read in conjunction with the Statement of Accounting Policies and Notes to the Financial Statements.

Fund No. 6 (02-03)		Fund No. 5 (01-02)		Fund No. 4 (00-01)		Fund No. 3 (99-00)		Fund No. 2 (98-99)		Fund No. 1 (97-98)		TOTAL	
2007	2006	2007	2006	2007	2006	2007	2006	2007	2006	2007	2006	2007	2006
\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
-	-	-	-	-	-	-	-	-	-	370,000	-	9,229,539	7,469,934
-	-	-	-	-	-	-	-	-	-	-	-	397,770	457,500
459,918	117,452	29,985	196,330	(424,893)	71,255	314,709	(172,401)	98,702	(49,987)	(6,635)	5,691	6,687,068	7,067,791
55,980	-	-	-	-	-	-	-	-	-	-	690	623,580	715,110
-	-	-	-	-	-	-	-	-	-	-	-	1,869,277	1,332,722
<b>(515,898)</b>	<b>(117,452)</b>	<b>(29,985)</b>	<b>(196,330)</b>	<b>424,893</b>	<b>(71,255)</b>	<b>(314,709)</b>	<b>172,401</b>	<b>(98,702)</b>	<b>49,987</b>	<b>376,635</b>	<b>(6,381)</b>	<b>447,384</b>	<b>(1,188,189)</b>
-	34,906	-	25,190	143,168	146,442	122,071	139,226	18,783	19,920	-	65	1,265,630	1,243,410
<b>(515,898)</b>	<b>(82,546)</b>	<b>(29,985)</b>	<b>(171,140)</b>	<b>568,061</b>	<b>75,187</b>	<b>(192,638)</b>	<b>311,627</b>	<b>(79,919)</b>	<b>69,907</b>	<b>376,635</b>	<b>(6,316)</b>	<b>1,713,014</b>	<b>55,221</b>
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	1,182,768	1,174,000
-	-	-	-	-	-	-	-	-	-	-	-	246,474	185,350
955	2,094	955	2,094	955	2,094	955	2,094	955	2,094	955	2,094	14,817	19,971
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	104,122	102,901
(244)	-	-	-	-	-	-	-	-	-	-	-	14,117	12,885
-	-	-	-	-	-	-	-	(3,935)	-	-	-	10,925	7,030
-	-	-	-	-	-	-	-	-	-	-	-	78,885	29,124
-	-	-	-	-	-	-	-	-	-	-	-	8,341	9,039
-	-	-	-	-	-	-	-	-	-	-	-	530	287
-	-	-	-	-	-	-	-	-	-	-	-	-	-
1,000,000	-	-	-	-	-	-	-	-	-	-	-	1,000,000	-
<b>1,000,711</b>	<b>2,094</b>	<b>955</b>	<b>2,094</b>	<b>955</b>	<b>2,094</b>	<b>955</b>	<b>2,094</b>	<b>(2,980)</b>	<b>2,094</b>	<b>955</b>	<b>2,094</b>	<b>2,660,979</b>	<b>1,540,587</b>
(1,516,609)	(84,640)	(30,940)	(173,234)	567,106	73,093	(193,593)	309,533	(76,939)	67,813	375,680	(8,410)	(947,965)	(1,485,366)
(18,957)	-	(18,009)	-	187,145	24,121	(29,654)	102,146	(11,906)	22,378	-	-	-	-
<b>(1,497,652)</b>	<b>(84,640)</b>	<b>(12,931)</b>	<b>(173,234)</b>	<b>379,961</b>	<b>48,972</b>	<b>(163,939)</b>	<b>207,387</b>	<b>(65,033)</b>	<b>45,435</b>	<b>375,680</b>	<b>(8,410)</b>	<b>(947,965)</b>	<b>(1,485,366)</b>

# New Zealand Mutual Liability Riskpool

Statement of Movements in Trust Funds for the year ended 30 June 2007

	Fund No. 11 (07–08)	Fund No. 10 (06–07)	Fund No. 9 (05–06)		Fund No. 8 (04–05)		Fund No. 7 (03–04)	
	2007	2007	2007	2006	2007	2006	2007	2006
	\$	\$	\$	\$	\$	\$	\$	\$
<b>Total Trust Funds at 1 July 2006</b>	-	-	(333,712)	-	(2,780,464)	(2,638,230)	(2,377,428)	(1,332,498)
Net Surplus/(Deficit)	-	2,043,348	(1,934,255)	(333,712)	774,779	(142,234)	(847,923)	(1,044,930)
Capital Contribution	-	-	-	-	-	-	-	-
<b>Total Trust Funds at 30 June 2007</b>	-	<b>2,043,348</b>	<b>(2,267,967)</b>	<b>(333,712)</b>	<b>(2,005,685)</b>	<b>(2,780,464)</b>	<b>(3,225,351)</b>	<b>(2,377,428)</b>



This statement is to be read in conjunction with the Statement of Accounting Policies and Notes to the Financial Statements.

Fund No. 6 (02-03)		Fund No. 5 (01-02)		Fund No. 4 (00-01)		Fund No. 3 (99-00)		Fund No. 2 (98-99)		Fund No. 1 (97-98)		TOTAL	
2007	2006	2007	2006	2007	2006	2007	2006	2007	2006	2007	2006	2007	2006
\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
202,833	287,473	349,022	522,256	1,780,686	1,731,714	1,852,892	1,645,505	370,167	324,732	(349,720)	(341,310)	(1,285,724)	199,642
(1,497,652)	(84,640)	(12,931)	(173,234)	379,961	48,972	(163,939)	207,387	(65,033)	45,435	375,680	(8,410)	(947,965)	(1,485,366)
-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>(1,294,819)</b>	<b>202,833</b>	<b>336,091</b>	<b>349,022</b>	<b>2,160,647</b>	<b>1,780,686</b>	<b>1,688,953</b>	<b>1,852,892</b>	<b>305,134</b>	<b>370,167</b>	<b>25,960</b>	<b>(349,720)</b>	<b>(2,233,689)</b>	<b>(1,285,724)</b>

# New Zealand Mutual Liability Riskpool

Statement of Financial Position as at 30 June 2007

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	Note	Fund No. 11 (07-08)	Fund No. 10 (06-07)	Fund No. 9 (05-06)		Fund No. 8 (04-05)		Fund No. 7 (03-04)	
		2007	2007	2007	2006	2007	2006	2007	2006
		\$	\$	\$	\$	\$	\$	\$	\$
<b>Trust Funds</b>									
Trust Accounts		-	2,043,348	(2,267,967)	(333,712)	(2,005,685)	(2,780,464)	(3,371,542)	(2,523,619)
Trust Capital Account		-	-	-	-	-	-	146,191	146,191
<b>Total</b>		-	2,043,348	(2,267,967)	(333,712)	(2,005,685)	(2,780,464)	(3,225,351)	(2,377,428)
Represented by:									
<b>Current Assets</b>									
Bank – ANZ Banking Group		(53,736)	634,669	883,862	139,719	57,958	105,536	51,021	78,895
Short Term Bank Deposits		-	4,380,000	3,400,000	4,535,000	3,155,000	2,810,000	-	2,045,000
Accrued Interest		-	64,793	63,335	53,530	80,386	35,044	-	7,554
Accounts Receivable		-	22,242	-	-	112,500	-	250,000	-
Prepayments		47,765	-	-	-	-	-	-	-
Excess Claims Recovery	6	-	-	-	-	1,267,644	1,397,907	3,512,396	3,540,997
Provision for Doubtful Debts	2	-	-	-	-	-	-	-	-
Taxation Receivable/(Payable)		-	22,263	55,383	94,611	32,953	1,100,731	9,580	392,536
GST Receivable/(Payable)		5,971	59,544	15,270	41,389	72,719	58,324	119,989	60,919
<b>Total Current Assets</b>		-	5,183,511	4,417,850	4,864,249	4,779,160	5,507,542	3,942,986	6,125,901
<b>Total Assets</b>		-	5,183,511	4,417,850	4,864,249	4,779,160	5,507,542	3,942,986	6,125,901
<b>Current Liabilities</b>									
Accounts Payable		-	37,313	53,996	34,986	190,356	2,357	1,556	2,356
Interfund Payable/(Receivable)		-	608,656	(713,835)	(457,500)	52,544	(96,539)	(416,936)	60,708
Provision for Rebate		-	-	-	-	-	-	-	-
Contributions Received in Advance		-	-	-	-	-	-	-	-
<b>Total Current Liabilities</b>		-	645,969	(659,839)	(422,514)	242,900	(94,182)	(415,380)	63,064
<b>Claims Provision</b>	6	-	2,494,194	7,345,656	5,620,475	6,541,945	8,382,188	7,583,717	8,440,265
<b>Total Liabilities</b>		-	3,140,163	6,685,817	5,197,961	6,784,845	8,288,006	7,168,337	8,503,329
<b>EXCESS/(DEFICIT) ASSETS OVER LIABILITIES</b>		-	2,043,348	(2,267,967)	(333,712)	(2,005,685)	(2,780,464)	(3,225,351)	(2,377,428)

Signed on behalf of the Trustee,  
Local Government Mutual Funds Trustee Limited on 26 November 2007.

Director



Director



This statement is to be read in conjunction with the Statement of Accounting Policies and Notes to the Financial Statements.

Fund No. 6 (02-03)		Fund No. 5 (01-02)		Fund No. 4 (00-01)		Fund No. 3 (99-00)		Fund No. 2 (98-99)		Fund No. 1 (97-98)		TOTAL	
2007	2006	2007	2006	2007	2006	2007	2006	2007	2006	2007	2006	2007	2006
\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
(1,425,984)	71,668	(40,323)	(27,392)	862,422	482,461	223,682	387,621	32,490	97,523	25,960	(349,720)	(5,923,599)	(4,975,634)
131,165	131,165	376,414	376,414	1,298,225	1,298,225	1,465,271	1,465,271	272,644	272,644	-	-	3,689,910	3,689,910
(1,294,819)	202,833	336,091	349,022	2,160,647	1,780,686	1,688,953	1,852,892	305,134	370,167	25,960	(349,720)	(2,233,689)	(1,285,724)
(2,040,523)	35,747	(492,347)	(374,980)	944,772	123,823	118,239	78,960	88,321	27,268	(42,165)	(84,707)	150,071	130,261
-	-	-	-	1,645,000	1,865,000	1,590,000	1,855,000	185,000	310,000	-	-	14,355,000	13,420,000
-	-	-	-	25,464	37,810	44,197	8,601	4,104	3,444	-	-	282,279	145,983
-	-	-	-	-	-	-	-	-	-	370,000	-	754,742	-
-	-	-	-	-	-	-	-	-	-	-	-	47,765	-
6,570,203	5,432,592	1,835,707	4,000,906	-	-	-	-	-	-	105,500	147,356	13,291,450	14,519,758
(1,000,000)	-	-	-	-	-	-	-	-	-	-	-	(1,000,000)	-
-	98,901	-	35,948	32,156	217,287	19,702	120,261	2,684	1,181	-	991	174,721	2,062,447
(44,739)	(59,493)	(6,382)	36,267	5,258	4,951	6,442	15,746	23,215	23,128	(1,884)	(522)	255,403	180,709
3,484,941	5,507,747	1,336,978	3,698,141	2,652,650	2,248,871	1,778,580	2,078,568	303,324	365,021	431,451	63,118	28,311,431	30,459,158
3,484,941	5,507,747	1,336,978	3,698,141	2,652,650	2,248,871	1,778,580	2,078,568	303,324	365,021	431,451	63,118	28,311,431	30,459,158
1,556	2,356	1,556	2,727	1,556	2,356	1,556	2,356	1,556	6,291	1,556	2,356	292,557	58,141
54,116	114,635	(361,601)	(344,038)	350,711	257,293	45,811	91,039	(22,741)	(28,207)	403,275	402,609	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-
55,672	116,991	(360,045)	(341,311)	352,267	259,649	47,367	93,395	(21,185)	(21,916)	404,831	404,965	292,557	58,141
4,724,088	5,187,923	1,360,932	3,690,430	139,736	208,536	42,260	132,281	19,375	16,770	660	7,873	30,252,563	31,686,741
4,779,760	5,304,914	1,000,887	3,349,119	492,003	468,185	89,627	225,676	(1,810)	(5,146)	405,491	412,838	30,545,120	31,744,882
(1,294,819)	202,833	336,091	349,022	2,160,647	1,780,686	1,688,953	1,852,892	305,134	370,167	25,960	(349,720)	(2,233,689)	(1,285,724)

# New Zealand Mutual Liability Riskpool

Statement of Cash Flows for the year ended 30 June 2007

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	Note	Fund No. 11 (07–08)	Fund No. 10 (06–07)	Fund No. 9 (05–06)		Fund No. 8 (04–05)		Fund No. 7 (03–04)	
		2007	2007	2007	2006	2007	2006	2007	2006
		\$	\$	\$	\$	\$	\$	\$	\$
<b>Cash flows from operating activities</b>									
<b>Cash was provided from:</b>									
Members' Contributions		-	8,609,539	-	7,247,111	-	-	-	-
Interest Received–Bank		-	288,845	296,548	286,352	207,614	370,091	76,215	260,261
		-	<b>8,898,384</b>	<b>296,548</b>	<b>7,533,463</b>	<b>207,614</b>	<b>370,091</b>	<b>76,215</b>	<b>260,261</b>
<b>Cash was applied to:</b>									
Reinsurance		-	(1,869,277)	-	(1,332,722)	-	-	-	-
Scheme Managers Fees		-	(1,173,999)	-	(1,174,000)	-	-	-	-
Fund Managers Fees		-	(246,474)	-	(185,350)	-	-	-	-
Legal Fees		-	(71,385)	(12,997)	(16,127)	-	(7,500)	-	-
Claims		-	(324,935)	(717,821)	(125,312)	(1,154,299)	(931,216)	(2,428,213)	(1,473,967)
Consultants		(47,765)	(85,516)	(13,631)	(95,801)	-	(6,600)	-	-
Audit Fees		-	-	(1,666)	-	(1,666)	(3,219)	(1,666)	(2,094)
Other Expenses		-	(30,867)	(8,748)	(20,143)	496	(15,834)	620	-
Taxation paid		-	(22,263)	39,228	(94,611)	1,251,284	(536,267)	339,329	(270,715)
Net GST		(5,971)	(58,999)	28,230	(65,354)	(6,007)	(49,354)	(59,159)	(12,240)
<b>Net cash inflow/(outflow) from operating activities</b>	<b>5</b>	<b>(53,736)</b>	<b>(3,883,715)</b>	<b>(687,405)</b>	<b>(3,109,420)</b>	<b>89,808</b>	<b>(1,549,990)</b>	<b>(2,149,089)</b>	<b>(1,759,016)</b>
		<b>(53,736)</b>	<b>5,014,669</b>	<b>(390,857)</b>	<b>4,424,043</b>	<b>297,422</b>	<b>(1,179,899)</b>	<b>(2,072,874)</b>	<b>(1,498,755)</b>
<b>Cash flows from investing activities:</b>									
Net (increase) /decrease in investments		-	-	-	-	-	-	-	-
<b>Net cash inflow/(outflow) from investing activities</b>		-	-	-	-	-	-	-	-
<b>Cash flows from financing activities:</b>									
Advances (to) / from other Funds		-	-	-	-	-	-	-	-
<b>Net cash inflow/(outflow) from investing activities</b>		-	-	-	-	-	-	-	-
<b>Net increase/(decrease) in cash held</b>		(53,736)	5,014,669	(390,857)	4,424,043	297,422	(1,179,899)	(2,072,874)	(1,498,755)
Opening cash		-	-	4,674,719	250,676	2,915,536	4,095,435	2,123,895	3,622,650
<b>Ending cash</b>		<b>(53,736)</b>	<b>5,014,669</b>	<b>4,283,862</b>	<b>4,674,719</b>	<b>3,212,958</b>	<b>2,915,536</b>	<b>51,021</b>	<b>2,123,895</b>

This statement is to be read in conjunction with the Statement of Accounting Policies and Notes to the Financial Statements.

Fund No. 6 (02-03)		Fund No. 5 (01-02)		Fund No. 4 (00-01)		Fund No. 3 (99-00)		Fund No. 2 (98-99)		Fund No. 1 (97-98)		TOTAL	
2007	2006	2007	2006	2007	2006	2007	2006	2007	2006	2007	2006	2007	2006
\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
-	-	-	-	-	-	-	-	-	-	-	-	8,609,539	7,247,111
-	50,688	-	36,047	155,514	136,628	86,475	154,927	18,123	17,175	-	65	1,129,334	1,312,234
-	<b>50,688</b>	-	<b>36,047</b>	<b>155,514</b>	<b>136,628</b>	<b>86,475</b>	<b>154,927</b>	<b>18,123</b>	<b>17,175</b>	-	<b>65</b>	<b>9,738,873</b>	<b>8,559,345</b>
-	-	-	-	-	-	-	-	-	-	-	-	(1,869,277)	(1,332,722)
-	-	-	-	-	-	-	-	-	-	-	-	(1,173,999)	(1,174,000)
-	-	-	-	-	-	-	-	-	-	-	-	(246,474)	(185,350)
-	-	-	-	-	-	-	-	-	-	-	-	(84,382)	(23,627)
(2,117,344)	(951,002)	(192,465)	(1,262,051)	357,173	(23,026)	(402,330)	(126,070)	(95,497)	(16,129)	42,509	(36,460)	(7,033,222)	(4,945,233)
-	-	-	-	-	-	-	-	-	-	-	-	(146,912)	(102,401)
(1,666)	(2,094)	(1,666)	(2,094)	(1,666)	(2,094)	(1,666)	(2,094)	(1,666)	(2,094)	(1,666)	(2,094)	(14,994)	(17,877)
244	-	-	-	-	-	-	-	-	-	-	-	(38,255)	(35,977)
57,339	(20,433)	34,204	(12,980)	90,324	(81,352)	82,585	(54,042)	15,269	(5,668)	428	(65)	1,887,727	(1,076,133)
(14,843)	45,136	42,560	(29,491)	(396)	528	9,215	(5,021)	(176)	12,484	1,271	(842)	(64,275)	(104,154)
<b>(2,076,270)</b>	<b>(928,393)</b>	<b>(117,367)</b>	<b>(1,306,616)</b>	<b>445,435</b>	<b>(105,944)</b>	<b>(312,196)</b>	<b>(187,227)</b>	<b>(82,070)</b>	<b>(11,407)</b>	<b>42,542</b>	<b>(39,461)</b>	<b>(8,784,063)</b>	<b>(8,997,474)</b>
<b>(2,076,270)</b>	<b>(877,705)</b>	<b>(117,367)</b>	<b>(1,270,569)</b>	<b>600,949</b>	<b>30,684</b>	<b>(225,721)</b>	<b>(32,300)</b>	<b>(63,947)</b>	<b>5,768</b>	<b>42,542</b>	<b>(39,396)</b>	<b>954,810</b>	<b>(438,129)</b>
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-
(2,076,270)	(877,705)	(117,367)	(1,270,569)	600,949	30,684	(225,721)	(32,300)	(63,947)	5,768	42,542	(39,396)	954,810	(438,129)
35,747	913,452	(374,980)	895,589	1,988,823	1,958,139	1,933,960	1,966,260	337,268	331,500	(84,707)	(45,311)	13,550,261	13,988,390
<b>(2,040,523)</b>	<b>35,747</b>	<b>(492,347)</b>	<b>(374,980)</b>	<b>2,589,772</b>	<b>1,988,823</b>	<b>1,708,239</b>	<b>1,933,960</b>	<b>273,321</b>	<b>337,268</b>	<b>(42,165)</b>	<b>(84,707)</b>	<b>14,505,071</b>	<b>13,550,261</b>

# New Zealand Mutual Liability Riskpool

Notes to the Financial Statements for the year ended 30 June 2007

## Note 1. Statement of Accounting policies

### REPORTING ENTITY

The purpose of New Zealand Mutual Liability Riskpool (the Scheme) is to provide cover to Member local governments for, and manage, all claims for civil liabilities made against Members during the period 4pm 30 June to 4pm 30 June. A separate fund is established for each year.

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Local Government Mutual Funds Trustee Limited (LGMFTL) has been appointed to act as the Trustee for the Scheme.

New Zealand Local Government Insurance Corporation Limited trading as Civic Assurance (Civic) has been appointed the Fund Manager for the Scheme and holds all the shares in LGMFTL in trust for the Members of the Scheme.

### GENERAL ACCOUNTING POLICIES

The financial statements for each fund year have been prepared in accordance with generally accepted accounting practice.

Accrual Accounting is used to match expenses and revenue. The measurement base adopted is that of historical cost with the exception of short term deposits which are at market value.

### PARTICULAR ACCOUNTING POLICIES

The following particular accounting policies which materially affect the measurement of financial performance and financial position have been applied:

### *Goods and Services Tax*

The financial statements are prepared on a GST exclusive basis.

### *Revenue*

Members contributions are recognised in the relevant fund in the year for which they are invoiced.

### *Claims*

All claims are provided for when notified and claims provisions are recognised at management's best estimate of future expected claims costs. The claims provision includes provision for future expected claims settlement, incurred but not reported claims, and incurred but not enough reported. It also includes anticipated future claims handling costs.

### *Excess Claims Recovery*

Reinsurance recoveries are provided for when the claims incurred exceed the reinsurance excess level. These debtors are stated at estimated realisable value after providing against debts where collection is not certain.

### *Short Term Deposits*

Short Term Deposits with maturities at balance date of less than 90 days are valued at maturity value.

### *Taxation*

The income tax expense charged against the surplus for the year is the estimated liability in respect of that surplus and is calculated after an allowance for permanent differences. The liability method of accounting for deferred taxation is applied on a comprehensive basis. Future tax benefits attributable to tax losses or timing differences are only recognised when there is virtual certainty of realisation.

The Scheme has utilised income tax losses available from previous years.

### DIFFERENTIAL REPORTING

The Funds qualify for differential reporting as they are not publicly accountable and not large.

The Funds have taken advantage of exemptions relating to: FRS-31: Disclosure of Information about Financial Instruments, SSAP12: Accounting for Income Tax; and SSAP 22: Related Party Disclosures

### CHANGES IN ACCOUNTING POLICIES

There have been no changes in accounting policies during the year.



## Note 2. Basis of preparation of accounts

Many assumptions were made in arriving at the estimated figure of the outstanding claims reserve. The final outcome will depend on many variables including the percentage of WHRS (The Weathertight Home Resolution Service) registrations that will not proceed, the percentage that will involve private certifiers and will have no impact on Riskpool and the contribution applied to other parties. The estimate takes into account all known relevant factors and draws on Riskpool's historical experience of these types of claims and external actuarial advice. The figure invariably will be subject to upwards or downwards adjustments in the future as claims are resolved.

In addition, there is a possibility that some claims in fund year six arising through the WHRS will be excluded by Riskpool's reinsurers. If this happens, the anticipated reinsurance recovery for fund year six of \$6,570,203 will reduce. A bad debt provision of \$1 million has been provided for in Fund Six. In the opinion of the Board the bad debt provision is the best estimate of the possible outcomes. If all WHRS claims in Fund Six were excluded by Riskpool's reinsurers, the bad debt provision would need to be increased from \$1 million to \$3.3 million.

Although some of the Funds indicate a shortfall in equity, their ability to continue in existence on a going concern basis is appropriate because the Trustee is able to levy the members to cover the shortfall in equity in any Fund under the terms of the Trust Deed.

## Note 3. Taxation

Application was made to the Inland Revenue Department in 2001 for a Private Binding Ruling on the income tax treatment of Riskpool's financial affairs. The tax related aspects of these Financial Statements reflect the result of the Binding Ruling which was received in December 2003.

## Note 4. Statement of Cash Flows

The Statement of Cash Flows is prepared on a GST exclusive basis which is consistent with the Statement of Financial Performance.

- a) Cash is considered to be cash on hand and current accounts in banks, net of overdrafts.
- b) Investing activities are those relating to the acquisition, holding and disposal of investments.
- c) Financing activities are those activities which result in changes in the size and composition of the capital structure of the Scheme.
- d) Operating activities include all transactions and other events that are not investing or financing activities.

# New Zealand Mutual Liability Riskpool (continued)

Notes to the Financial Statements for the year ended 30 June 2007

Note 5. Reconciliation of net surplus/(deficit) to net cash inflow/(outflow) from operating activities

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	Fund No. 11 (07–08)	Fund No. 10 (06–07)	Fund No. 9 (05–06)		Fund No. 8 (04–05)		Fund No. 7 (03–04)	
	2007	2007	2007	2006	2007	2006	2007	2006
	\$	\$	\$	\$	\$	\$	\$	\$
<b>Net Surplus/(Deficit)</b>	-	2,043,348	(1,934,255)	(333,712)	774,779	(142,234)	(847,923)	(1,044,930)
<b>Add/(less) non cash items</b>								
Claims Provision	-	2,494,194	1,725,181	5,620,475	(1,709,980)	(594,536)	(827,947)	(221,671)
<b>Add/(less) movements in other working capital items</b>	-	<b>2,494,194</b>	<b>1,725,181</b>	<b>5,620,475</b>	<b>(1,709,980)</b>	<b>(594,536)</b>	<b>(827,947)</b>	<b>(221,671)</b>
Accrued Interest	-	(64,793)	(9,805)	(53,530)	(45,342)	50,234	7,554	42,339
GST Receivable	(5,971)	(59,544)	26,119	(69,242)	(14,396)	(45,623)	(59,070)	(5,710)
Taxation Receivable	-	(22,263)	39,228	(94,611)	1,067,778	(536,266)	382,956	(270,715)
Interfund Payable/Receivable	-	608,656	(256,335)	(457,500)	149,083	126,976	(477,644)	60,708
Trust Income Distribution	-	-	-	-	-	-	-	-
Prepayments	(47,765)	-	-	-	-	-	-	-
Deferred Tax	-	-	-	-	-	-	-	-
Contribution received in advance	-	-	-	(222,823)	-	-	-	-
Accounts Receivable	-	(22,242)	-	-	(112,500)	-	(250,000)	-
Accounts Payable	-	37,313	19,010	34,986	188,000	(38,450)	(800)	(58,776)
	<b>(53,736)</b>	<b>477,127</b>	<b>(181,783)</b>	<b>(862,720)</b>	<b>1,232,623</b>	<b>(443,129)</b>	<b>(397,004)</b>	<b>(232,154)</b>
<b>Net cash inflow/(outflow) from operating activities</b>	<b>(53,736)</b>	<b>5,014,669</b>	<b>(390,857)</b>	<b>4,424,043</b>	<b>297,422</b>	<b>(1,179,899)</b>	<b>(2,072,874)</b>	<b>(1,498,755)</b>

Fund No. 6 (02–03)		Fund No. 5 (01–02)		Fund No. 4 (00–01)		Fund No. 3 (99–00)		Fund No. 2 (98–99)		Fund No. 1 (97–98)		TOTAL	
2007	2006	2007	2006	2007	2006	2007	2006	2007	2006	2007	2006	2007	2006
\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
(1,497,652)	(84,640)	(12,931)	(173,234)	379,961	48,972	(163,939)	207,387	(65,033)	45,435	375,680	(8,410)	(947,965)	(1,485,366)
(601,446)	(891,536)	(164,299)	(1,069,348)	(68,800)	46,069	(90,021)	(301,231)	2,605	(67,856)	34,643	(30,079)	794,130	2,490,287
<b>(601,446)</b>	<b>(891,536)</b>	<b>(164,299)</b>	<b>(1,069,348)</b>	<b>(68,800)</b>	<b>46,069</b>	<b>(90,021)</b>	<b>(301,231)</b>	<b>2,605</b>	<b>(67,856)</b>	<b>34,643</b>	<b>(30,079)</b>	<b>794,130</b>	<b>2,490,287</b>
-	15,782	-	10,857	12,345	(9,815)	(35,596)	15,701	(660)	(2,745)	-	-	(136,297)	68,823
(14,754)	51,207	42,649	(28,905)	(306)	529	9,304	(5,021)	(87)	12,484	1,361	(907)	(74,695)	(91,188)
98,901	(20,433)	35,948	(12,980)	185,131	(81,352)	100,559	(54,042)	(1,503)	(5,668)	991	-	1,887,726	(1,076,067)
(60,519)	106,560	(17,563)	7,950	93,418	26,281	(45,228)	104,906	5,466	24,118	667	-	1	(1)
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	(47,765)	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	(222,823)
-	-	-	-	-	-	-	-	-	-	(370,000)	-	(754,742)	-
(800)	(54,645)	(1,171)	(4,909)	(800)	-	(800)	-	(4,735)	-	(800)	-	234,417	(121,794)
<b>22,828</b>	<b>98,471</b>	<b>59,863</b>	<b>(27,987)</b>	<b>289,788</b>	<b>(64,357)</b>	<b>28,239</b>	<b>61,544</b>	<b>(1,519)</b>	<b>28,189</b>	<b>(367,781)</b>	<b>(907)</b>	<b>1,108,645</b>	<b>(1,443,050)</b>
<b>(2,076,270)</b>	<b>(877,705)</b>	<b>(117,367)</b>	<b>(1,270,569)</b>	<b>600,949</b>	<b>30,684</b>	<b>(225,721)</b>	<b>(32,300)</b>	<b>(63,947)</b>	<b>5,768</b>	<b>42,542</b>	<b>(39,396)</b>	<b>954,810</b>	<b>(438,129)</b>

# New Zealand Mutual Liability Riskpool (continued)

Notes to the Financial Statements for the year ended 30 June 2007

## Note 6. Claims

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	Fund No. 11 (07–08)	Fund No. 10 (06–07)	Fund No. 9 (05–06)		Fund No. 8 (04–05)		Fund No. 7 (03–04)	
	2007	2007	2007	2006	2007	2006	2007	2006
	\$	\$	\$	\$	\$	\$	\$	\$
<b>Cumulative Claims Experience</b>								
Claims provision	-	2,494,194	7,345,656	5,620,475	6,541,945	8,382,188	7,583,717	8,440,265
Claims paid–Current year	-	324,935	734,378	125,312	1,263,179	926,240	2,373,402	1,421,721
Claims paid–Prior year(s)	-	-	125,312	-	1,020,654	94,414	2,203,188	781,467
Claims paid–Prior Year(s) adjustments	-	-	1,517	-	(41,058)	-	54,811	-
<b>Gross claims incurred (Paid and estimated)</b>	-	<b>2,819,129</b>	<b>8,206,863</b>	<b>5,745,787</b>	<b>8,784,720</b>	<b>9,402,842</b>	<b>12,215,118</b>	<b>10,643,453</b>
Less claims recovery ex Reinsurers	-	-	-	-	(1,267,644)	(1,397,907)	(3,512,396)	(3,540,997)
<b>Maximum claims exposure</b>	-	<b>2,819,129</b>	<b>8,206,863</b>	<b>5,745,787</b>	<b>7,517,076</b>	<b>8,004,935</b>	<b>8,702,722</b>	<b>7,102,456</b>
<b>Claims Reconciliation</b>								
Claims Provision 30 June 2006	-	-	5,620,475	-	8,382,188	7,578,817	8,440,265	6,009,857
Claims Paid	-	(324,935)	(734,378)	(125,312)	(1,263,179)	(926,240)	(2,373,402)	(1,421,721)
Reassessment of prior years claims	-	-	2,461,076	-	(487,859)	331,704	1,600,266	1,200,050
Current years claims received	-	2,819,129	-	5,745,787	-	-	-	-
Claim paid–Prior year(s) adjustments	-	-	(1,517)	-	41,058	-	(54,811)	-
Movement in excess of claims recovery	-	-	-	-	(130,263)	1,397,907	(28,601)	2,652,079
<b>Claims Provision at 30 June 2007</b>	-	<b>2,494,194</b>	<b>7,345,656</b>	<b>5,620,475</b>	<b>6,541,945</b>	<b>8,382,188</b>	<b>7,583,717</b>	<b>8,440,265</b>

Each Fund has entered into a reinsurance contract with the effect that the Funds have maximum claims paying exposure of: Fund 1 \$2,000,000, Fund 2 \$2,500,000, Funds 3, 4 & 5 \$3,000,000, Fund 6 \$3,250,000, Fund 7 \$3,500,000, Funds 8 & 9 \$4,000,000 and Fund 10 \$6,000,000. However Funds 7 and thereafter do not have reinsurance cover for WHRS “leaky homes” claims.

HIH and FAI were participants in the excess loss annual aggregate reinsurance programmes for Funds 1 & 2. Both these companies have been placed in full receivership in 2001 and proforma claims have been lodged with the Receivers. Prior to being placed into receivership the HIH portfolio, including their claims runoff, was sold to QBE so expectations are that any claim

Fund No. 6 (02–03)		Fund No. 5 (01–02)		Fund No. 4 (00–01)		Fund No. 3 (99–00)		Fund No. 2 (98–99)		Fund No. 1 (97–98)		TOTAL	
2007	2006	2007	2006	2007	2006	2007	2006	2007	2006	2007	2006	2007	2006
\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
4,724,088	5,187,923	1,360,932	3,690,430	139,736	208,536	42,260	132,281	19,375	16,770	660	7,873	30,252,563	31,686,741
2,128,944	902,428	149,643	1,257,728	41,165	23,026	108,043	126,070	1,416	16,129	(6,357)	36,460	7,118,748	4,835,114
3,635,482	2,733,054	3,379,104	2,121,376	1,619,849	1,596,823	1,568,498	1,442,428	2,008,734	1,992,605	2,167,523	2,131,063	17,728,344	12,893,230
(11,600)	-	42,451	-	(398,338)	-	294,287	-	94,081	-	(36,151)	-	-	-
<b>10,476,914</b>	<b>8,823,405</b>	<b>4,932,130</b>	<b>7,069,534</b>	<b>1,402,412</b>	<b>1,828,385</b>	<b>2,013,088</b>	<b>1,700,779</b>	<b>2,123,606</b>	<b>2,025,504</b>	<b>2,125,675</b>	<b>2,175,396</b>	<b>55,099,655</b>	<b>49,415,085</b>
(6,570,203)	(5,432,592)	(1,835,707)	(4,000,906)	-	-	-	-	-	-	(105,500)	(147,356)	(13,291,450)	(14,519,758)
<b>3,906,711</b>	<b>3,390,813</b>	<b>3,096,423</b>	<b>3,068,628</b>	<b>1,402,412</b>	<b>1,828,385</b>	<b>2,013,088</b>	<b>1,700,779</b>	<b>2,123,606</b>	<b>2,025,504</b>	<b>2,020,175</b>	<b>2,028,040</b>	<b>41,808,205</b>	<b>34,895,327</b>
5,187,923	4,942,877	3,690,430	1,034,517	208,536	162,467	132,281	433,512	16,770	84,626	7,873	17,100	31,686,741	20,263,773
(2,128,944)	(902,428)	(149,643)	(1,257,728)	(41,165)	(23,026)	(108,043)	(126,070)	(1,416)	(16,129)	6,357	(36,460)	(7,118,748)	(4,835,114)
515,898	10,892	27,795	188,380	(425,973)	69,095	312,309	(175,161)	98,102	(51,727)	(7,865)	6,381	4,093,749	1,579,614
-	-	-	-	-	-	-	-	-	-	-	-	2,819,129	5,745,787
11,600	-	(42,451)	-	398,338	-	(294,287)	-	(94,081)	-	36,151	-	-	-
1,137,611	1,136,582	(2,165,199)	3,725,261	-	-	-	-	-	-	(41,856)	20,852	(1,228,308)	8,932,681
<b>4,724,088</b>	<b>5,187,923</b>	<b>1,360,932</b>	<b>3,690,430</b>	<b>139,736</b>	<b>208,536</b>	<b>42,260</b>	<b>132,281</b>	<b>19,375</b>	<b>16,770</b>	<b>660</b>	<b>7,873</b>	<b>30,252,563</b>	<b>31,686,741</b>

on HIH will be met in full. Present indications are that, based on the outstanding claims in the two Funds, the exposure to FAI will not be a large or material amount.

The outstanding claims provision for Fund 6 of \$4,724,088, Fund 7 of \$7,583,717, Fund 8 of \$6,541,945, Fund 9 of \$7,345,656

and Fund 10 of \$2,494,194 includes a provision for WHRS “leaky building” claims (GST exclusive) of \$901,891, \$2,917,721, \$2,597,654, \$4,144,754 and \$831,979 respectively. These figures were based on a detailed analysis of the likely exposure to Riskpool based on registrations made to the WHRS.

The Future Claims Administration Expense reflects the level of claims being handled.

Due to the nature of the claims the claims outstanding amounts have been discounted using a 7% discount factor over the estimated years for settlement.

# Scheme Rules

## 1. STRUCTURE OF RULES

These Rules are divided into parts as follows:-

**Part 1** Interpretation

**Part 2** Scheme Membership

**Part 3** Commencement of Closure of Fund Years

**Part 4** Contributions

**Part 5** Liability Protection

**Part 6** Claims Procedures

**Part 7** Scheme Member Default and Cancellation of Scheme Membership

## 2. DEFINITIONS

In these Rules:

**‘Board’** means the Board of Directors formed pursuant to clause 5 of the Deed of Trust;

**‘Claim’** means any claim for civil liability made upon a Member during the term of the Scheme and, in the case where a single claim is made or representative action is brought on behalf of more than one person, means the individual claim by such person;

**‘Deed of Trust’** means the deed dated the 1st day of July 1997 establishing the Fund (as amended from time to time);

**‘Fund’** means each separate annual Fund established pursuant to clause 4 of the Deed of Trust;

**‘NZLGIC’** means New Zealand Local Government Insurance Corporation Limited.

**‘Indemnity Cover’** means insurance cover purchased by the Board on behalf of Scheme Members to meet claims against Scheme Members in the amount and in respect of risks determined from time to time by the Board;

**‘Pooled Cover’** means cover provided from the Fund to meet claims against Scheme Members in the amount and in respect of risks determined from time to time by the Board;

**‘Fund Manager’** means the Fund Manager appointed pursuant to clause 10 of the Deed of Trust;

**‘Scheme’** means the scheme more formally known as New Zealand Mutual Liability Riskpool constituted by the Deed of Trust;

**‘Scheme Documents’** means these Rules, the Deed of Trust, the Protection Wording, and any other document issued by the Scheme;

**‘Scheme Manager’** means the Scheme Manager appointed pursuant to clause 9 of the Deed of Trust.

**‘Scheme Member’** means any person or body (whether incorporated or not) admitted as a Member of the Scheme from time to time pursuant to clause 9 of the Deed of Trust;

**‘Jardine’** means Jardine Risk Consultants Limited;

**‘Protection Wording’** means, in relation to any particular Member, the Combined Liability Protection Wording issued to that Scheme Member by the Scheme setting out the risks covered by the Scheme and the terms, conditions and limits of pooled cover and primary cover in respect of those risks, and “Guideline for Exercise of Discretion” or “Guidelines” has a corresponding meaning.

## 3. PURPOSE OF RULES

**3.1** these rules form one of the three principal constituent documents of the Scheme. The other two are:-

**3.1.1** the Deed of Trust which constitutes the Scheme and sets out its purpose and intent as well as its underlying legal structure and controls; and

**3.1.2** the Protection Wording issued to each Scheme Member (either the Standard Broad Form Combined Liability Protection Wording or a modified Protection Wording tailored to a particular Member’s requirements) which sets out the type and limits of protection provided to each Member;

**3.1.3** in the case of conflict between the provisions of:

- (a) the Deed of Trust;
- (b) the Scheme Rules; or
- (c) The Protection Wording;

(a) shall prevail over (b) which shall prevail over (c).

**3.2** The purpose of these rules is to set out the administrative mechanisms by which Protection Wordings are issued and by which the Scheme is administered so as to put the purpose and intent of the Deed of Trust into effect.



#### 4. OFFER OF MEMBERSHIP

An offer of Membership of the Scheme may be made to:-

- 4.1** all Local Authorities within the meaning of the Local Government Act 1974;
- 4.2** Local Government New Zealand Incorporated;
- 4.3** any other person or organisation approved for admission by a special resolution of the Board.

#### 5. DETAILS OF OFFER

An offer must include:-

- 5.1** a copy of the Protection Wording for the liability protection offered by the Scheme to the prospective Member;
- 5.2** a copy of the Deed of Trust;
- 5.3** a copy of these Rules, and
- 5.4** advice as to the contribution payable for the first Fund year of Scheme Membership.

#### 6. ACCEPTANCE OF OFFER

A body becomes a Scheme Member by:-

- 6.1** accepting the offer in writing; and
- 6.2** paying the initial Fund Year Membership contribution within twenty (20) days of the date of the offer (or for such longer period as determined by the Board) failing which, unless otherwise determined by the Board, the offer of Membership lapses.

#### 7. SUBSEQUENT FUND YEARS

Not later than thirty (30) days prior to the end of the Fund Year, the Board must determine in respect of each Scheme Member, and advise each Scheme Member in writing:-

- 7.1** whether the Scheme Member will be offered renewed Membership of the Scheme for the next Fund Year;
- 7.2** if so, the contribution payable by the Scheme Member in respect of that Fund Year.

#### 8. MANNER OF RENEWAL

A Scheme Member, who wishes to accept an offer of renewal for the next Fund Year must pay the contribution within twenty (20) days of the date of renewal of Membership of the Scheme, failing which, unless otherwise determined by the Board, the offer of renewed Membership lapses.

#### 9. GENERAL SCHEME MEMBERSHIP OBLIGATIONS

**9.1** By its acceptance of an offer of Membership (or renewal Membership as the case may be) a Scheme Member agrees that, at all times while it remains a Member of the Scheme:-

- 9.1.1** subject to clause 9.3 of these Rules, the Deed of Trust and these Rules, as amended from time to time constitute a contract between the Scheme and the Scheme Member;
- 9.1.2** it will be bound by the Deed of Trust and these Rules and perform the obligations of a Scheme Member under the same accordingly;

**9.1.3** it will make available to the Scheme Manager all information and data which the Scheme Manager reasonably requires in order to determine the claims and risk management experience of the Scheme Member for the purpose of assessing contributions;

**9.1.4** the Scheme Manager shall be permitted (but not obligated) to carry out a risk management audit or otherwise inspect the Scheme Member's property and operations at any time; and

**9.1.5** the Scheme Manager may examine and audit the Scheme Member's books and records at any time (but only so far as they relate to the Membership of the Scheme or risks covered by the Scheme);

**9.2** for the avoidance of doubt, the contract the subject of clause 9.1.1 of these Rules is a contract between a Scheme Member and the Scheme only and the contract does not create, as between Scheme Member and any other Scheme Member or Scheme Members, any joint rights or obligations or any mutual rights or obligations.

**9.3** To the extent, if any, to which a provision of these Rules or the Deed of Trust provides or implies:-

- 9.3.1** in any way contrary to clause 9.2 of these Rules or;
  - 9.3.2** that the Scheme is constituted a joint or mutual agent for Scheme Members or any of them;
- that provision is, to that extent, inoperative and does not form part of the legal relationship between a Scheme Member and the Scheme.

## 10. SCHEME DOES NOT WARRANT RISK LEVELS

Each Scheme Member acknowledges that neither the Scheme's rights to make inspections nor the making thereof nor any report thereon constitutes an agreement or the assumption of an obligation, on behalf of or for the benefit of the Scheme Member or others, to determine or warrant that such property or operations are safe or represent any particular level of risk to liability.

## 11. FIRST FUND YEAR

The first Fund Year is from 4.00 pm on the 30th day of June 1997 to 4.00 pm on the 30th day of June 1998.

## 12. SUBSEQUENT FUND YEARS

Subsequent Fund Years are from 4.00 pm on 30 June in a calendar year to 4.00 pm on 30 June in the next calendar year, unless otherwise determined by the Board.

## 13. CLOSURE OF THE FUND YEAR

**13.1** the Board must determine when the accounts for a Fund Year will be closed and final results for the Fund Year determined and declared.

**13.2** except in the event of the Scheme being wound up no Scheme Member has any entitlement to be paid any amount on account of surplus for a Fund Year unless:-

**13.2.1** the accounts for the Fund Year have been closed and final results determined and declared; and

**13.2.2** the Board has determined that a distribution or return should be paid to Scheme Members in respect of that Fund Year.

## 14. RELEVANT FACTORS IN DETERMINATION

The contributions determined for any Scheme Member in respect of any Fund Year shall be determined having regard to advice from the Scheme Manager and the Fund Manager and

such matters as the Board considers relevant to the Scheme Member's level of risk and may include, without limitation:-

**14.1** the Scheme Member's revenue base;

**14.2** the geographical location of the Scheme Member's area of jurisdiction;

**14.3** the population of the Scheme Member's area of jurisdiction;

**14.4** the Scheme Member's public liability and professional indemnity claims history (both during and prior to its Membership of the Scheme);

**14.5** any matter relating to the nature of the Scheme Member's area of jurisdiction or its operations which create increased or reduced risks of public liability or professional indemnity claims; and

**14.6** any matters relevant to the Scheme Member's risk management practices that are known to the Board.

## 15. ADDITIONAL CONTRIBUTIONS

If during a Fund Year it becomes apparent to the Board that, as a result of unexpected or exceptional circumstances, the Fund for that year will be insufficient to meet claims payable from the Fund, the Board may determine an additional contribution payable by each Scheme Member for the Fund Year (which will be in the same proportion to the contributions of all other Scheme Members as the initial contribution paid by the Scheme Member for that Fund Year).

## 16. TIME FOR PAYMENT

All contributions (including an additional contribution under clause 15 or Part 7 of these Rules) must be paid within twenty (20) days of the date of renewal of Membership to the Scheme Manager or the Fund Manager (or such longer period as determined by the Board).

## 17. OVERDUE PAYMENTS

Without affecting any other Rule, if the amount of any contribution (including any additional contribution under clause 15 or Part 7 of these Rules) is not paid by the due date:-

**17.1** interest thereon may, if the Board so determines, accrue calculated daily, on daily balances (and compounding semi-annually) at the Bank of New Zealand Indicator Rate from the due date to the date of actual payment.

**17.2** an unpaid contribution (and interest) constitutes a debt payable by the relevant Scheme Member to the Scheme.

## 18. COVERAGE

In respect of each Fund Year, but subject always to the Deed of Trust and these Rules, the Scheme will indemnify each Scheme Member against claims for damages or compensation in accordance with the Protection Wording issued to that Scheme Member.

## 19. CHANGE TO SCOPE OF PROTECTION

**19.1** the Board may from Fund Year to Fund Year alter, add to, reduce or otherwise vary the scope of protection as set out in the Protection Wording;

**19.2** if the Board makes a change mentioned in clause 19.1 of these Rules it must include a copy of the new Protection Wording or details of the change with every offer of renewed Membership for the Fund Year in which the change takes effect.

## 20. RECOURSE TO SCHEME ASSETS ONLY

For the payment of any claim against the Scheme or the performance of any obligation of the Scheme hereunder, resort may be had solely to the Fund and other assets and property of the Scheme and no claim may be made or endorsed by a Scheme Member against:-

**20.1** any Trustee of the Scheme;

**20.2** the Scheme Manager or the Fund Manager in any capacity other than as Scheme Manager or Fund Manager of the Scheme;

**20.3** except in the case of negligence or other breach of duty, any Board Member, employee, or agent of the Scheme; or

**20.4** any other Scheme Member.

## **21. PAYMENT OF CLAIMS**

The amounts of Court judgements or claim settlements approved by the Board during a Fund Year in respect of claims made against the Scheme Member during that Fund Year will be met, subject to the deductible or excess (if any and unless the Board determines not to apply the deductible or excess) specified in the relevant Protection Wording:-

**21.1** to the extent that the amount does not exceed the amount of the pooled cover, from the Fund;

**21.2** to the extent that the amount exceeds the amount of the pooled cover:-

**21.2.1** to the amount of the pooled cover, from the Fund; and

**21.2.2** thereafter from Indemnity Cover to the extent of that cover;

**21.3** to the extent that the amount exceeds the amount of pooled cover and Indemnity Cover:-

**21.3.1** to the amount of the pooled cover, from the relevant Annual Fund for that Fund Year; and

**21.3.2** to the amount of the Indemnity Cover for that Fund Year, to the extent of that cover; and

**21.3.3** the balance by the Fund from Surpluses from previous Fund Years and from Additional Contributions from Members; and

**21.3.4** to the limit of any guarantee provided by the Fund Manager, by the Fund Manager.

## **22. REIMBURSABLE DEDUCTIBLE OR EXCESS**

**22.1** if the Scheme pays any deductible or excess amount referred to in a Protection Wording for the Scheme Member, the Scheme Member shall reimburse the Scheme within fourteen (14) days of written notice from the Scheme.

**22.2** without affecting anything in these Rules, if the amount of the deductible or excess is not paid within fourteen (14) days interest accrues thereon and the amount is recoverable in accordance with clause 17 of these Rules as though the deductible or excess were an overdue contribution.

## **23. NOTICE OF CLAIMS**

Notice in writing must be given as soon as possible to the Scheme Manager:-

**23.1** of any occurrence, circumstance, claim, Statement of Claim, summons or proceedings or of any impending prosecution, inquest or inquiry, or knowledge of any occurrence or circumstances which may subsequently give rise to a claim covered by the Scheme, irrespective of the quantum of such claim; and

**23.2** of any change materially affecting or varying any of the facts or circumstances existing at the commencement of the cover by the Scheme that shall come to the knowledge of the Scheme Member. Such notice shall be given by the Scheme Member whose knowledge shall be deemed to include the knowledge of any person whose knowledge would at law be that of the Scheme Member.

## **24. INFORMATION TO BE PROVIDED**

The Scheme Member must provide to the Scheme, the Scheme Manager and any Loss Adjuster, Solicitor or other agent appointed by the Scheme Manager, with respect to a claim or potential claim, all information requested by such party in the manner and format requested by such party.

## **25. GRANT OR REFUSAL OF INDEMNITY**

Subject to clause 10.2 of the Deed of Trust, the Board shall advise the Scheme Member as soon as practicable after receipt of a claim advice as to whether the Scheme grants or refuses indemnity.

## **26. ADMISSIONS NOT TO BE MADE**

The Scheme Member shall not make any admission, offer, promise or give any indemnity in respect of a claim or potential claim or claim circumstance or potential claim circumstance without the written consent of the Board.

## **27. INDEMNITY MAY BE REFUSED**

Without limiting the discretions of the Board under the Deed of Trust, the Scheme will not indemnify the Scheme Member against any claim or claim circumstance (and may withdraw any indemnity previously granted) where:-

**27.1** the Scheme Member has:-

**27.1.1** breached or failed to comply with any condition or obligation in the Protection Wording issued to the Scheme Member or under the Deed of Trust or these Rules; or

**27.1.2** committed any other act or made any other omission which entitled the Board to cancel the Membership of the Scheme Member under clause 38 of these Rules; and

**27.2** the Scheme is prejudiced by that breach, failure, act or omission.

## 28. SUBROGATION

The Scheme Member agrees that in the event of payment of any claim by the Scheme, the Scheme will be subrogated to the extent of such payment to all the rights of the Scheme Member against any person or other legal entity responsible for the claim, and in such event, the Scheme Member shall render to the Scheme Manager, Loss Adjuster, Solicitor or other agent appointed by the Scheme Manager all assistance other than pecuniary, as is reasonably necessary to effect recovery.

## 29. SETTLEMENT OF CLAIMS

**29.1** if the Scheme Manager so desires, it may take over the conduct in the name of the Scheme Member the defence or settlement of any claim.

**29.2** the Scheme Member shall promptly take at its own expense all reasonable steps to prevent other Loss, Personal Injury or Property Damage arising out of the same or similar conditions, but such expense shall not be recoverable from the Scheme.

**29.3** the Scheme Member shall use its best endeavours to preserve any damaged or defective property which might prove necessary or useful by way of evidence in connection with any claim and except where some other course is required by clause 30.2 of these Rules but only so far as may reasonably be practical, the Scheme Member must not make any alteration or repair to any premises, machinery, fittings, appliances or plant without the consent of the Scheme until the Scheme has had an opportunity of inspection.

**29.4** the Scheme has full discretion to conduct any proceedings in connection with any claim.

**29.5** the Scheme is entitled to prosecute in the name of the Scheme Member, at its own expense and for its own benefit any claim for indemnity or damages or otherwise.

**29.6** notwithstanding clauses 29.1 to 29.5 of these Rules, a Scheme Member shall not be required to contest any legal proceedings unless a Solicitor (to be mutually agreed upon by the Scheme Member and the Scheme) shall advise that such proceeding should be contested, with the reasonable probability of success or partial success.

## 30. SCHEME MEMBER'S LITIGATION RESPONSIBILITIES

In connection with any litigation or claim settlement negotiations conducted by the Scheme in the name of the Scheme Member, or any action taken by the Scheme in exercise of its rights of subrogation:-

**30.1** if a personal appearance by an elected Member, officer or agent of the Scheme Member is necessary at any conference, in any Court or elsewhere, the expense of such an appearance shall be borne or paid by the Scheme Member;

**30.2** the Scheme Member shall fully co-operate by supplying any information and assistance requested by the Scheme Manager and any Loss Adjuster, Solicitor or other agent appointed by the Scheme Manager or the Scheme with respect to the litigation claim;

**30.3** the Scheme Member may upon notice in writing, prevent a settlement proposed by the Scheme of litigation or a claim brought or made against the Scheme Member, but if it does so and the claim is ultimately settled (or judgement is ultimately given) for a higher amount, then notwithstanding clause 21 of these Rules, the Scheme Member must pay all amounts (including interest and legal costs) which exceed the amounts that the Scheme would have had to pay if the claim had been settled as proposed by the Scheme.

## 31. RELINQUISH CONTROL

The Scheme may at any time pay to a Scheme Member the limit of pooled cover and Indemnity Cover applying to any one claim or series of claims (after deduction of sums already paid) or any lesser amount for which such claims can be settled and shall then be under no further obligation or liability in connection with such claim or claims.

## 32. REASONABLE CARE

A Scheme Member shall as far as is reasonably practical:-

**32.1** exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in a safe and sound condition;

**32.2** take all reasonable precautions to:-

**32.2.1** prevent loss or damage to property and personal injury;

**32.2.2** prevent the manufacture, sale or supply of defective products;

**32.2.3** prevent the release, issue, tender or supply of defective or erroneous advice or information;

**32.2.4** comply and ensure that its employees, servants and agents comply with all statutory obligations, by-laws or regulations imposed on or by any Local Authority; and

**32.3** at its own expense take all reasonable action to trace, recall or modify any item, document, information, advice or product manufactured, constructed, erected, installed, altered, repaired, serviced, treated, sold, supplied, distributed, prepared, provided, issued or tendered by the Scheme Member (including any container thereof other than a vehicle) containing any defect, error or deficiency of which the Scheme Member has knowledge or has reason to suspect.

### 33. AUTOMATIC REINSTATEMENT

Upon notification to the Scheme of a claim made against a Scheme Member during the Fund Year, cover under the Protection Wording shall be reinstated for such amount as may be ultimately paid by the Scheme in respect of such claim, so as to remain in force during the fund Year for the full cover specified in the Protection Wording.

### 34. CONTRIBUTION

When a loss paid under a Protection Wording is also recoverable under another Protection Wording or under an insurance policy and the Scheme has paid more than its rateable share, the Scheme reserves its rights to seek contribution from the other party or insurer.

### 35. WITHDRAWAL

A Scheme Member may withdraw from Membership of the Scheme only at the expiry of a Fund Year upon giving to the Board written notice of its intention prior to the expiry of that Fund Year.

### 36. EFFECT OF WITHDRAWAL

Unless otherwise determined by the Board withdrawal does not:-

**36.1** entitle the Scheme Member to a refund of contributions (in full or in part) in respect of the unexpired part of the Fund Year;

**36.2** vary or waive the obligations of the continuing Scheme Members to comply with the provisions of the Deed of Trust or these Rules; or

**36.3** affect the withdrawing Scheme Member's current or subsequent obligation to make further contributions pursuant to the Deed of Trust, these Rules or the Protection Wording for any Fund Year whilst the Scheme Member was a Scheme Member of the Scheme (including the unexpired part of the Fund Year of withdrawal).

### 37. NOTICE TO SHOW CAUSE WHY SCHEME MEMBERSHIP SHOULD NOT BE CANCELLED

In the event that any Scheme Member (in this part referred to as 'the defaulting Scheme Member'):-

**37.1** fails to comply with the reasonable directions of the Board as to the conduct of its operations so as to minimise risks;

**37.2** fails to:-

**37.2.1** make available to the Scheme Manager all information and data which either of them reasonably require in order to determine the claim and risk management experience of the Scheme Member for the purpose of assessing contributions;

**37.2.2** permit the Scheme Manager to carry out a risk management audit or otherwise inspect the Scheme Members property and operations;

**37.2.3** permit the Scheme Manager to examine and audit the Scheme Member's books and records (but only so far as they relate to Membership of the Scheme or risks covered by the Scheme);

**37.3** fails to pay contributions due to the Scheme within the time prescribed by these Rules;

**37.4** commits any other breach of these Rules which is not remedied within the time specified in a notice to the defaulting Scheme Member;

in that that regard, the Board may by notice in writing to the defaulting Scheme Member require that defaulting Scheme Member show good cause within fourteen (14) days why its Membership should not be cancelled.

### 38. CANCELLATION OF SCHEME MEMBERSHIP

The Board may, by special resolution, cancel the Membership of a Scheme Member by giving that Scheme Member notice in writing to that effect, where the Scheme Member:-

**38.1** fails to comply with the duty of utmost good faith; or

**38.2** fails to comply with the duty of disclosure; or

**38.3** has made a representation to the Scheme during negotiations for and before the commencement date of its Scheme Membership (or any subsequent renewal of Scheme Membership); or

**38.4** has made any fraudulent claim to the Scheme or under any contract of insurance; or

**38.5** fails to show sufficient cause to the contrary in response to a notice issued pursuant to clause 37 of these Rules.

### 39. EFFECTIVE DATE OF CANCELLATION

A notice of cancellation takes effect at:-

**39.1** the time when a Policy of Insurance between the Scheme Member and an Insurer, being a Policy of Insurance that is intended by the Scheme Member to replace its cover under the Scheme, is entered into; or

**39.2** 4.00 pm on the 30th business day after the day on which notice was given to the Scheme Member (or such later time as specified in the notice);

whichever occurs first.

#### 40. EFFECT OF CANCELLATION

Upon a notice of cancellation taking effect:-

**40.1** from that date the defaulting Scheme Member shall have no right to claim against the pooled cover or the Indemnity Cover cover in respect of:-

**40.1.1** any claim in respect of any event occurring after that date; or

**40.1.2** any claim first made against the defaulting Scheme Member after that date, or circumstance that the defaulting Scheme Member becomes aware of that may give rise to a claim being made against the defaulting Scheme Member after that date; or

**40.1.3** in a case where indemnity, where already granted, is customarily on a claims made basis, any claim made on the defaulting Scheme Member after that date; and

**40.2.** from that date the defaulting Scheme Member shall have no right to claim against the pooled cover or the Indemnity Cover cover in respect of any claim made upon it after that date and the Protection Wording is cancelled accordingly; and

**40.3** such cancellation nevertheless does not otherwise affect entitlement to cover for any claim already indemnified by the Board and a claim has been made on the defaulting Scheme Member before that date, nor vary or waive the obligations of the defaulting Scheme Member to comply with the provisions of these Rules in respect of any Fund Year during which the defaulting Scheme Member was a Member of the Scheme.

#### 41. ADDITIONAL CONTRIBUTION TO COVER COST OF DEFAULT

In the event that a Scheme Member is in default for payment of a contribution or in any other way whereby the Scheme suffers any financial loss or incurs additional expense the Board may as an alternative to cancellation require the defaulting Scheme Member to pay to the Scheme an additional contribution in an amount to be determined by the Board to reimburse the Scheme for the loss or the additional expense.

#### 42. ADDITIONAL CONTRIBUTION FOR ADDITIONAL RISKS

In the event that a Scheme Member fails to comply with the direction of the Board and, in so doing, in the opinion of the Board exposes the Scheme to an increased, additional or readily avoidable risk, the Board may as an alternative to cancellation:-

**42.1** require the Scheme Member to pay an additional contribution to cover that risk; or

**42.2** exclude that risk from the pooled cover and the Indemnity Cover applicable to that Scheme Member; or

**42.3** otherwise limit the exposure of the Scheme and the Primary Insurer or Primary Insurers to such risk.

#### 43. SET-OFF AGAINST MONIES DUE TO THE SCHEME MEMBER

In the event that a Scheme Member is otherwise entitled to a distribution or return of any surplus of any Fund, any amount due to a defaulting Scheme Member will be set-off against:-

**43.1** any contribution or other monies due but unpaid by the defaulting Scheme Member to the Scheme; and

**43.2** any loss or expense incurred by the Scheme by, through or in connection with the defaulting Scheme Member.



## 2006–07 Fund Year Membership

Ashburton District Council  
Auckland City Council  
Auckland Regional Council  
Buller District Council  
Carterton District Council  
Central Hawkes Bay District Council  
Central Otago District Council  
Chatham Islands Council  
Christchurch City Council  
Clutha District Council  
Environment BOP  
Environment Canterbury  
Environment Southland  
Environment Waikato  
Far North District Council  
Franklin District Council  
Gisborne District Council  
Gore District Council  
Grey District Council  
Hamilton City Council  
Hastings District Council  
Hauraki District Council  
Hawkes' Bay Regional Council  
horizons.mw  
Horowhenua District Council  
Hurunui District Council  
Hutt City Council  
Invercargill City Council  
Kaikoura District Council  
Kaipara District Council  
Kapiti Coast District Council

Kawerau District Council  
Mackenzie District Council  
Manawatu District Council  
Manukau City Council  
Marlborough District Council  
Masterton District Council  
Matamata-Piako District Council  
Napier City Council  
Nelson City Council  
New Plymouth District Council  
North Shore City Council  
Northland Regional Council  
Opotiki District Council  
Otago Regional Council  
Otorohanga District Council  
Palmerston North City Council  
Papakura District Council  
Porirua City Council  
Queenstown Lakes District Council  
Rangitikei District Council  
Rodney District Council  
Rotorua District Council  
Ruapehu District Council  
Selwyn District Council  
South Taranaki District Council  
South Waikato District Council  
South Wairarapa District Council  
Southland District Council  
Stratford District Council  
Taranaki Regional Council  
Taranaki District Council

Tasman District Council  
Taupo District Council  
Tauranga District Council  
Timaru District Council  
Upper Hutt City Council  
Waikato District Council  
Waimakariri District Council  
Waimate District Council  
Wairoa District Council  
Waipa District Council  
Waitakere City Council  
Waitaki District Council  
Waitomo District Council  
Wanganui District Council  
Wellington City Council  
West Coast Regional Council  
Western Bay of Plenty District Council  
Westland District Council  
Whakatane District Council  
Whangarei District Council

### **Membership enquiries are welcome and should be referred to:**

The Scheme Manager  
New Zealand Mutual Liability Riskpool  
P O Box 11–145  
Wellington  
Attention: Paul Carpenter  
Telephone: 04 495 8228  
Facsimile: 04 495 8177  
E-mail: paul.carpenter@jlt.co.nz

# Local Government Mutual Funds Trustee Limited

## Directory

Registered Office	9th Floor Civic Assurance House 114 Lambton Quay Wellington
Directors	Michael Ross (Chairman) Oamaru Ray Andrew Auckland Bob Lineham Christchurch Denis Sheard Auckland Tim Sole Wellington Bryan Taylor Auckland
Scheme Manager	Jardine Lloyd Thompson Limited
Fund Manager	Civic Assurance
Scheme Solicitors	Heaney & Co
Scheme Auditors	Deloitte

**NEW ZEALAND LOCAL GOVERNMENT INSURANCE CORPORATION LIMITED**  
("LGIC")

**AND**

**LOCAL GOVERNMENT MUTUAL FUNDS TRUSTEE COMPANY LIMITED**  
("Trustee Company")

This document is an amalgamation of the DEED OF TRUST dated 1 July 1997 and the provisions of  
the DEED OF VARIATION OF DEED OF TRUST dated 22 June 2007

**THIS DEED OF TRUST made the 1st day of July 1997**

## **PARTIES**

**NEW ZEALAND LOCAL GOVERNMENT INSURANCE CORPORATION LIMITED** at Wellington ("LGIC")

**LOCAL GOVERNMENT MUTUAL FUNDS TRUSTEE LIMITED** ("Trustee Company")

## **BACKGROUND**

- A. LGIC is a Local Authority Trading Enterprise as that term is defined in the Local Government Act 1974.
- B. Trustee Company is a company incorporated under the Companies Act 1993 and is a wholly owned subsidiary of LGIC.
- C. LGIC, in consultation with Jardine, has agreed to establish a Trust pursuant to this deed to provide the Fund and the Scheme (to be known as the New Zealand Mutual Liability Riskpool) for the benefit of the Members of the Scheme and to manage all Claims for Civil Liabilities against the Members of the Scheme which may arise in connection with the exercise by the Members of any of their powers, duties or functions.
- D. The purpose for establishing this Trust in consultation with Members is to benefit residents and ratepayers of New Zealand and in particular that purpose is to be achieved by enabling Members to be recompensed from the Fund in respect of liabilities thus reducing the need for insurance cover and reducing Members' annual expenses. In addition the Scheme Manager will work with Members to ensure that proper systems are developed to promote the efficient and safe fulfilment of each Member's functions thus providing a benefit to the community as a whole.
- E. LGIC has agreed to hold all the shares in Trustee Company on trust for the Members of the Scheme pursuant to this deed.
- F. Trustee Company has agreed to act as Trustee of the Scheme and to hold and apply the Fund in accordance with this deed and the other Scheme Documents so as to provide the benefits intended to be obtained by Members of the Scheme as envisaged by this deed and the other Scheme Documents.

## THIS DEED WITNESSES:

### 1. INTERPRETATION:

1.1 In this deed unless the context clearly requires otherwise:

**“Act”** means the Companies Act 1993.

**“Additional Contribution”** means any additional or further contribution to an Annual Fund by a Member, after the initial Contribution to that Annual Fund, called for or demanded by the Board pursuant to this deed and the Scheme Rules.

**“Annual Fund”** means the separate fund established, pursuant to the Scheme Documents, for each Fund Year of the Scheme.

**“Board”** means the directors of Trustee Company who number not less than the quorum required pursuant to the Constitution acting together as a board of directors.

**“Call”** means each call or demand for an Additional Contribution.

**“Civil Liability”** means any civil liability resulting from an obligation, function, power or duty of a Member arising under law and includes any public liability and any liability for negligence of the Member.

**“Claim”** means any claim by a Member in respect of that Member’s Civil Liability during the term of the Scheme in respect of the Risks.

**“Constitution”** means the constitution of Trustee Company as may be varied, or substituted from time to time.

**“Contribution”** includes each Member’s initial contribution to each Annual Fund as determined by the Board, pursuant to clause 11 and each Additional Contribution.

**“Deed of Participation”** means the deed of participation required to be entered into by each Member pursuant to clause 16.

**“Fund”** means all assets and property of the Scheme and includes each separate Annual Fund.

**“Fund Manager”** means the manager of the Fund pursuant to clause 10.

**“Fund Year”** means the year commencing 4.00pm on 30th June in each year and terminating 4.00pm on 30th June in the next following year, or as otherwise determined by the Board.

**“Guidelines for Exercise of Discretion”** or **“Guidelines”** means the guidelines from time to time set out by the Board as detailed in clause 8.1.

**“Indemnity Cover”** means insurance cover purchased by the Board on behalf of Members to meet the Claims of the Members in the amount and in respect of the Risks determined from time to time by the Board being amounts payable in excess of the pooled cover.

**“Jardine”** means Jardine Risk Consultants Limited.

**“Local Authority”** means a local authority pursuant to the Local Government Act 1974.

**“Member”** means any person or body (whether incorporated or not) admitted as a Member to the Scheme pursuant to the Scheme Documents.

**“Pooled Cover”** means cover provided from the Fund to manage and, if the Claims are accepted by the Board, settle or pay the Claims against the Members in respect of the Risks.

**“Risks”** means those risks of Civil Liability of each Member and which fall within the Guidelines for Exercise of Discretion for the relevant Fund Year.

**“Scheme”** means the scheme, to be known as the New Zealand Mutual Liability Riskpool, constituted by this deed and the other Scheme Documents.

**“Scheme Documents”** means this deed, the Scheme Rules, and the Constitution of Trustee Company and for each Member, its Deed of Participation and the Guidelines.

**“Scheme Manager”** means the manager of the Scheme appointed from time to time pursuant to clause 9.

**“Scheme Manager’s Quantum”** shall mean \$30,000 inclusive of self retained limit or such other amount as shall from time to time be fixed by the Board.

**“Scheme Rules”** means the rules of the Scheme as promulgated by the Board from time to time.

**“Scheme Solicitor”** means the solicitor appointed from time to time by the Board.

**“Self Retained Limit”** means the deductible or excess to be borne by each Member in respect of its Risks and Claims against it as provided in the Guidelines.

**“Shares”** means the shares in Trustee Company.

**“Underlying Claim”** means any claim for civil liability (covered for the time being under the Guidelines) made against a Member which may give rise to a Liability; but also includes a claim which may give rise to a Liability to a Member under any other category of risk to that Member which the Guidelines of the Scheme may properly have been extended to cover pursuant to the terms of this deed.

- 1.2 In this deed, unless the context clearly otherwise requires:
- 1.2.1 Words importing the singular shall include the plural and vice versa;
- 1.2.2 References to any legislation shall include references to all amendments to that legislation and to any legislation passed in substitution for it (in whole or in part);
- 1.2.3 References to “director” or “directors” shall be to a director, or directors, of Trustee Company, acting in their capacity as such; and;
- 1.2.4 References to persons shall be deemed to include references to individuals, companies, corporations, firms, partnerships, joint ventures, associations, organisations, trusts, states or agencies of state, government departments and local and municipal authorities in each case whether or not having separate legal personality.

## 2. CONSTITUTION OF THE SCHEME

- 2.1 A scheme is hereby established by LGIC and Jardines for the benefit of Members of the Scheme with the objects set out in clause 3. The name of the Scheme shall be the New Zealand Mutual Liability Riskpool.
- 2.2 The parties agree that Trustee Company shall act as the Trustee of the Scheme established under this deed and shall be responsible to ensure that the purposes of the Scheme as provided by this deed and the other Scheme Documents are carried into effect.

- 2.3 The Fund of the Scheme shall include all assets and property for the time being held by or on behalf of Trustee Company, derived from:
- 2.3.1 Contributions;
- 2.3.2 Additional Contributions;
- 2.3.3 Any gifts, donations or grants
- 2.3.4 Revenue from investments;
- 2.3.5 Proceeds of realisation of investments;
- 2.3.6 Any policies or contracts of re-insurance or indemnity;
- 2.3.7 Any recoveries;
- 2.3.8 Any other source.
- 2.4 The Fund shall be held in trust for the benefit of the Members of the Scheme by Trustee Company upon the trusts and for the objects contained in this deed and shall be managed, administered and applied by Trustee Company in accordance with the powers contained in this deed, in order to attain those objects.
- 2.5 LGIC hereby declares that it holds the Shares on trust for the benefit of the Members in accordance with the terms of this deed and the other Scheme Documents for the objects and purposes of the Scheme.
- 2.6 Trustee Company is and shall remain responsible for the safe custody of all money, policies, certificates and other documents of title and value in connection with the Fund and for the safe custody, realisation and distribution of all assets and property from the Fund, from time to time vested in Trustee Company.

## 3. PURPOSES AND OBJECTS

- 3.1 LGIC and Trustee Company declare that their purposes in entering into this deed and the objects of the Scheme are:
- 3.1.1 To establish and maintain an Annual Fund for each Fund Year during the term of the Scheme for the benefit of the Members to meet the costs of establishing and running the Scheme and, subject to the terms of this deed and the other Scheme Documents and the Guidelines, to pay the Civil Liabilities of the Members arising from the Risks covered by the Scheme and specified in the Scheme Documents with the intention that Members’ needs for insurance cover and insurance expenses are reduced for the benefit of residents and ratepayers;
- 3.1.2 To provide Pooled Cover in respect of Risks as may be determined from time to time by the Board;
- 3.1.3 To manage and settle or pay Claims made against Members;
- 3.1.4 To develop programmes for the management of the risk of loss arising out of Civil Liability of the Members;
- 3.1.5 To reduce the amount and frequency of losses to the Members arising out of Civil Liability;
- 3.1.6 To purchase such Indemnity Cover or re-insurance in respect of such Risks as may be determined from time to time by the Board;

3.1.7	To undertake such other functions in relation to the management of Civil Liability as the Board may from time to time require having regard to the interests of the Members, including making grants from the Fund to a Member or any other person or body approved by the Board;	4.	<b>THE FUND</b>	4.2.2	to the extent that the Underlying Claim exceeds the amount of the Pooled Cover but does not exceed the amount of the Indemnity Cover for that Fund Year;
3.1.8	To investigate and if deemed appropriate by the Board, establish other Funds to cater for the insurance needs of Local Authorities and other local government organisations;	4.1	Trustee Company shall establish and maintain a Fund in the amount recommended by the Board and shall at the commencement of each Fund Year during the term of the Scheme on the advice of the Board invite the Members of the Scheme to contribute to the Fund at such levels as are determined pursuant to clause 6.6 to meet:	(i)	to the amount of the Pooled Cover, from the relevant Annual Fund for that Fund Year;
3.1.9	To work with Members to ensure that proper systems are developed to promote the efficient and safe fulfilment of each Member's functions to provide to the Community as a whole;	4.1.1	such Underlying Claims as may be made against any one or more of the Members during that Fund Year in respect of Risks to the extent of the Pooled Cover.	(ii)	thereafter from Indemnity Cover for that Fund Year to the extent of that Cover;
3.1.10	To do all other things as may be necessary or desirable to further the above objects in the interests of the Members of the Scheme.	4.1.2	the premium payable to an appropriate indemnity insurer or insurers to provide Indemnity Cover for the Members during that Fund Year.	4.2.3	To the extent that the Underlying Claim exceeds the amount of the Pooled Cover and the Indemnity Cover for that Fund Year;
3.2	The parties agree that they will co-operate to the fullest extent with each other in the implementation of the purposes stated in clause 3.1 and act in accordance with the provisions and spirit and intent of this deed.	4.1.3	the operating expenses of the Scheme for that year.	(i)	to the amount of the Pooled Cover, from the relevant Annual Fund for that Fund Year;
3.3	LGIC shall be entitled to be paid an administration fee to be determined from time to time by the Board for the performance of its functions and duties under this deed as Fund Manager and for the provision of any other services to Trustee Company.	4.1.4	the grants or allocations to be made pursuant to clauses 3.1.7 or 3.1.8 (if any).	(ii)	to the amount of the Indemnity Cover for that Fund Year, to the extent of that cover;
		4.1.5	any other amount determined by the Board to be required for the continuation of the Scheme.	(iii)	the balance by the Fund from surpluses from previous Fund Years and from Additional Contributions from Members;
		4.2	Each Underlying Claim made upon any of the Members during a Fund Year in respect of Risks may at the discretion of the Board be met:	(iv)	to the limit of any guarantee provided by LGIC, by LGIC.
		4.2.1	to the extent that the Underlying Claim does not exceed the amount of the Pooled Cover of the Annual Fund for that Fund Year from that Annual Fund;	4.3	The Members shall be invited to Contribute to the Fund in the proportions to be determined annually by the Board. The Contributions by Members for each Fund Year shall be held and accounted for as a separate Annual Fund for that Fund Year.

- 4.4 Trustee Company shall administer the Fund with the intent that upon the settlement of all Claims made in respect of occurrences or events arising during the relevant Fund Year;
- 4.4.1 any surplus or anticipated surplus remaining in the Fund attributable to that Fund Year shall be allocated at the absolute direction of the Board towards liabilities of the Fund for any later Fund Year; and
- 4.4.2 any deficiency in the Fund shall be met by Additional Contributions by each Member in the proportion in which Contributions were made to the Annual Fund for that Fund Year.
- 5 BOARD OF TRUSTEE COMPANY**
- 5.1 LGIC shall, following consultation with the Board, appoint persons (not exceeding a maximum of six at any one time) as directors for a term not exceeding three years and one month, and may following consultation with the Board at any time remove, with or without a replacement, any director.
- 5.2 Unless otherwise expressly provided in this deed or the Constitution, questions arising at any meeting of the Board shall be decided by a simple majority of the votes of those directors present and voting.
- 5.3 The quorum necessary for the transaction of business at meetings of the Board shall be the majority of the Directors. A director is to be counted for quorum purposes whether entitled to vote or not.
- 5.4 Subject to the provisions of this deed and any applicable law, LGIC shall determine, from time to time, what (if any) directors fees, other valuable consideration or other benefit shall be paid or given by Trustee Company out of the Fund to any director in respect of that person's performance of duties as a member of the Board.
- 5.5 No director may hold office for more than twelve years, whether continuously or in aggregate over several periods.
- 6. DUTIES OF THE BOARD**
- 6.1 The Board shall be responsible to LGIC as shareholder (as trustee for the Members). Notwithstanding anything to the contrary in the Constitution, the duties of the Board shall include:
- 6.1.1 Implementing and achieving the purposes and objects of the Scheme;
- 6.1.2 Considering all Claims made against the Fund and determining whether or not the Board's discretion should be exercised to meet the Claim for the Member from the Pooled Cover;
- 6.1.3 Ensuring the Scheme is and remains financially viable and solvent within the "solvency tests" laid down by the Act and generally at law;
- 6.1.4 Conduct its business in accordance with this deed and other Scheme Documents, and otherwise in such manner as is resolved by the Board from time to time;
- 6.1.5 Promulgating and amending the Scheme Rules and the Guidelines from time to time.
- 6.2 The Board shall regard the purposes and objects of this deed and the Scheme as being of paramount importance in decisions made and policies adopted by it in relation to the Scheme and shall adopt and use such management and other techniques as will ensure that those main objectives are achieved.
- 6.3 The Trustee Company being a wholly-owned subsidiary of LGIC (as trustee for the Members), any director may act in a manner which he or she believes is in the best interests of LGIC (as trustee for the Members) and the Members, notwithstanding that it may not be in the best interests of the Trustee Company.
- 6.4 A director who is an officer, employee, nominee or representative of a Member shall only be disqualified from voting on any matter that affects that Member if it affects the Member directly and in a materially different way from which it affects other Members or there are personal reasons why that director has a conflict of interest.
- 6.5 The Board shall from time to time appoint the Scheme Solicitor for such tenure and upon such terms as it shall in its sole discretion decide, but such appointment shall be formally reviewed by the Board at least every three years.
- 6.6 The Board shall be responsible for the financial management of the Scheme to the extent that it shall:
- 6.6.1 annually prepare the financial statements and, where considered necessary, report to the Members on any items arising from those statements;



6.6.2	annually determine the Guidelines for the Risks to be provided for from the Fund for any Fund Year;		reference in this deed to the Claims Committee shall be read accordingly.		as the Contributions paid by each of the Members to that Annual Fund in order to ensure that all Claims upon that Annual Fund are able to be met.
6.6.3	annually determine the amount of Pooled Cover to be provided for the Members from the Fund for any Fund Year;	6.8	The Board at its discretion may establish such other committees, to be constituted by such persons, as the Board may determine. The Board may delegate such of its powers, duties and functions as it may determine to any committee or person.	6.13	In addition to the provisions of this clause the Board may at any time resolve to apply by way of transfer or loan any actual or anticipated surplus then remaining in any Annual Fund to any later Annual Fund or to such purposes as may be considered appropriate having regard to the purposes of the Scheme and this deed.
6.6.4	annually determine the amount and nature of Indemnity Cover to be purchased for the Members from the Fund for any Fund Year and to determine the indemnity insurer or insurers for this purpose;	6.9	The Board at all times remains responsible for powers and duties delegated to any committee or person and must monitor, by means of reasonable methods properly used, the exercise of those powers and duties by the delegate.	6.14	The Board, in accordance with the provisions of this deed, may make payments and grants from the Fund for the benefit of the Members and to further the objectives of the Scheme as the Board deems fit.
6.6.5	be responsible for the assessment of the Members to determine the proportion in which they are to contribute to the Fund in each year. Each Member shall be required to and shall provide to the Board and to the Scheme Manager such information as the Board or the Scheme Manager may require in relation to the history of Civil Liability Claims made against the Member, the Member's operating procedures or such other matters as may be directed in order to permit the Board to carry out its obligations under this clause.	6.10	The Board shall consider regularly the reports of the Scheme Manager and the Claims Committee in relation to Claims and:	6.15	The Board shall within 12 months from the commencement of the Scheme hold an annual meeting of Members to be convened no earlier than 30 days after the mailing to Members of notice of such meeting. In each subsequent year in which the Scheme continues the Board shall in the same manner hold an annual meeting.
		6.10.1	shall, on the recommendation of the Claims Committee and Scheme Manager, determine whether to accept or reject any Claim;		
		6.10.2	from time to time shall issue instructions to the Claims Committee and Scheme Manager regarding the processing of Claims; and	6.16	Any meeting of the Members shall be called and conducted as closely as is practicable in accordance with the Constitution and the Act as if it were a meeting of the shareholders of Trustee Company and as if the Members were shareholders of Trustee Company, and each meeting shall otherwise regulate its own proceedings, however at any such meeting:
6.7	The Board may from time to time establish, or disestablish, a Claims Committee. Any such Claims Committee shall have such membership, duties, functions and powers, and be subject to such procedures, as the Board may from time to time stipulate. Where a Claims Committee is disestablished, its duties, functions and powers shall revert to the Board (but without prejudice to the validity or effectiveness of any act or omission of the Claims Committee prior to its disestablishment), and any	6.10.3	shall, on written request from a Member, reconsider any Claim that has been rejected.		
		6.11	[Intentionally Omitted]	6.16.1	a Member shall have one vote;
		6.12	Where it becomes apparent to the Board that the Annual Fund for any Fund Year will be insufficient to meet Claims payable from that Annual Fund, the Board may at any time require the payment by the Members of an Additional Contribution in the same proportions	6.16.2	a Member may vote only in respect of matters arising in, from or relating to a Fund Year during which the Member was or is a Member of the Scheme; and

6.16.3 matters arising in, from or relating to different Fund Years shall be considered and voted on separately.

## 7. [INTENTIONALLY OMITTED]

## 8. GUIDELINES AND CLAIMS

- 8.1 The Board upon the recommendation of the Scheme Manager shall set at the commencement of each Fund Year Guidelines for the exercise of its discretion as to whether or not Claims by Members should be met out of the Pooled Cover.
- 8.2 The Board shall have absolute and unfettered discretion as to whether or not any Claim should be met out of the Pooled Cover and shall be influenced by but not bound by the Guidelines.
- 8.3 The Claims Committee may authorise the Scheme Manager to meet Claims out of the Pooled Cover where:
- 8.3.1 Those Claims do not exceed the Scheme Manager's Quantum and;
  - 8.3.2 The Claim falls within the Guidelines and;
  - 8.3.3 The Underlying Claim against the Member is one for which the Member is reasonably liable and would in all probability be held liable at law for the amount of the Claim.
- 8.4 Where the quantum of any Underlying Claim exceeds the Scheme Manager's Quantum the Claims Committee shall authorise the Scheme Manager in conjunction with the Scheme Solicitor to administer and deal with that Underlying Claim but any settlement of a claim shall be authorised by the Claims Committee.

## 9. ENGAGEMENT OF SCHEME MANAGER

- 9.1 The Board shall appoint a person to be the Scheme Manager upon such conditions as to tenure and remuneration or otherwise as shall be determined by the Board in its sole discretion and agreed upon by the Scheme Manager and the first Scheme Manager shall be Jardine for a period of 5 years from commencement of the Scheme.
- 9.2 The Scheme Manager's duties shall be determined by the Board from time to time and may include:
- 9.2.1 from time to time undertake an assessment of the Members or any of them and their activities to assist the Fund Manager in the determination of the proportion in which the Members are to contribute to the Fund in any year and upon the conclusion of any such investigation direct the Members or any of them as to the procedures to be adopted by them to prevent losses or to minimise Civil Liability.
  - 9.2.2 under the supervision and direction of the Claims Committee and the Board the management of Claims made against each Member including:
    - (a) the investigation and assessment of those Claims;
    - (b) the preparation of regular reports to the Board on the progress of Claims and the preparation of recommendations as to the acceptance, rejection, settlement, litigation or other handling of the Claims;

- (c) the issue of instructions to the Scheme Solicitor for advice in respect of Claims and for assistance in the defence of Claims.

9.2.3 the provision of loss prevention and risk minimisation guidelines to members.

9.3 The Scheme Manager shall be available at all times to any member of the Board or any member of the Claim Committee or any other committee of the Board or any of the Members of the Scheme to answer any questions on the conduct of the Scheme's activities.

## 10. FUND MANAGER

- 10.1 LGIC shall be the Fund Manager upon such conditions as to remuneration or otherwise as shall be agreed by the Board and LGIC. In the event that LGIC becomes insolvent or ceases to trade then the Board shall appoint a new Fund Manager.
- 10.2 The Fund Manager's duties shall be determined by the Board from time to time and shall include:
- 10.2.1 the keeping of the accounts of the Annual Fund for each Fund Year;
  - 10.2.2 the provision of administrative and secretarial services to Trustee Company and the Board including setting agendas and submitting reports;
  - 10.2.3 the preparation of advice and recommendations on the investment of any moneys of the Fund not immediately required and implementation of decisions of the Board;

10.2.4	the preparation of regular reports to the Board in such form as the Board shall from time to time direct in respect of each Annual Fund as to:	10.4	The Fund Manager shall negotiate Indemnity Cover as requested by the Board and satisfying any specific requirements of LGIC while LGIC's Deed of Guarantee is operative or while there are outstanding amounts due to LGIC under any Deed of Guarantee.	11.2.7	any other matters the Board considers relevant, having regard to the purposes and objects of the Scheme.
	(i) Claims outstanding;			11.3	If during a Fund Year it becomes apparent to the Board that as a result of unexpected or exceptional circumstances the Fund for that Fund Year will be insufficient to meet Claims payable from the Fund, the Board may determine an Additional Contribution payable by each Member for the Fund Year (which will be in the same proportion to the Additional Contributions of all other Members as the initial Contribution paid by the Member for that Fund Year bears to the initial Contributions of all Members for that Fund Year).
	(ii) The Scheme Manager's assessment of liability in respect of each outstanding Claim;	11.	<b>CONTRIBUTIONS TO SCHEME</b>		
	(iii) The ability of the Fund to meet the assessment of liability;	11.1	Each Member, as a condition of membership of the Scheme for that Fund Year, shall pay the initial Contribution determined by the Board for that Member for that Fund Year.	11.4	All Contributions (including any Additional Contribution under sub-clause 11.3) must be paid within twenty days of the date of the contribution notice given to the Member by the Board, the Scheme Manager or the Fund Manager (or such longer period as stated in the notice or determined by the Board).
	(iv) The assessment of further Additional Contributions required, if any;	11.2	The Contributions determined for any Member in respect of any Fund Year, shall be determined having regard to the advice from the Claims Committee, the Fund Manager and the Scheme Manager and such matters as the Board considers relevant to the Scheme Member's level of risk and may include, without limitation:	11.5	Without affecting any other Rule, if the amount of any Contribution (including any Additional Contribution under sub-clause 11.3) is not paid by the due date:
	(v) The investment of the moneys of the Fund not immediately required;		11.2.1 the Member's revenue base;	11.5.1	interest may, if the Board so determines, accrue calculated daily, on daily balances (and compounding semi-annually) at the Bank of New Zealand Indicator Rate from the due date to the date of actual payment;
	(vi) The allocation of surplus moneys in the Fund, if any;		11.2.2 the geographical location of the Member's territory;	11.5.2	an unpaid Contribution (and interest) constitutes a debt payable by the relevant Member to the Scheme and Trustee Company may bring proceedings for the recovery of that debt in its name on behalf of the Scheme.
10.2.5	the preparation of the annual operating budget;		11.2.3 the population of the Member's territory;		
10.2.6	the calculation of Contributions in conjunction with actuarial advice and advice from the Scheme Manager;		11.2.4 the Member's Civil Liability claims history (both during and prior to its membership of the Scheme);		
10.2.7	the recommendation of the level of Pooled Cover to be provided in any Fund Year;		11.2.5 any matter relating to the nature of the Member's territory or its operations which create increased or reduced risks of Civil Liability;		
10.2.8	the recommendation of the level of Indemnity Cover to be provided in any Fund Year.		11.2.6 any matters relevant to the Scheme Member's risk management practices that are known to the Board;		
10.3	The Fund Manager shall be available at all times to any member of the Board or any member of the Claims Committee or any other committee of the Board or any Member of the Scheme to answer questions on the management of the Fund.				

## 12. BANK ACCOUNT, INVESTMENT AND BORROWING POWERS

- 12.1 Trustee Company shall open a bank account for the Fund with a registered Bank determined by the Board.
- 12.2 The name of the bank account and the persons authorised as signatories to operate the bank account shall be determined by the Board.
- 12.3 The parties agree that the Trustee Company may invest moneys received in respect of the Fund and not immediately required to meet the liabilities of the Fund;
- 12.3.1 with any registered Bank;
- 12.3.2 in any security or investment authorised by the Trustee Act; or
- 12.3.3 in any security or investment authorised by the Local Government Act 1974 or prescribed pursuant to and for the purposes of that Act; or
- 12.3.4 with the Trustee of any other Trust Fund established for the benefit of Local Authorities or other local government organisations.
- 12.5 The parties agree that for any of the purposes of this deed Trustee Company may borrow moneys and for that purpose secure the repayment of its borrowings by granting security over the assets of the Scheme and the Fund.
- 12.6 All Contributions and other moneys received by Trustee Company shall be deposited to the credit of the Fund and shall be applied at its discretion as follows:
- 12.6.1 in payment of any establishment costs for the Scheme;

- 12.6.2 in payment of all administrative and operating costs associated with the Scheme;
- 12.6.3 in payment of fees due to the Scheme Manager and the Fund Manager;
- 12.6.4 in payment of all Claims accepted by the Board;
- 12.6.5 by way of any grant or allocation approved under this deed; and
- 12.6.6 generally in furtherance of the Scheme's objectives including a transfer, payment or loan in accordance with the Scheme Documents.

- 12.7 The parties agree that Trustee Company and the Board shall keep or cause to be kept all such accounting records for the Scheme and the Fund as fully and correctly explain the transactions and financial position of the Scheme and the Fund.

## 13. RECOURSE TO SCHEME ASSETS ONLY

- 13.1 For the payment of any Claim against the Scheme or the performance of any obligation of the Scheme under this deed, resort may be had solely to the Fund and other assets and property of the Scheme and no claim may be made or endorsed by a Member against:
- 13.1.1 any Member of the Board;
- 13.1.2 the Scheme Manager or the Fund Manager in any capacity other than as Scheme Manager or Fund Manager of the Scheme;
- 13.1.3 except to the extent of LGIC's indemnity to Trustee Company, LGIC; or
- 13.1.4 any other Member.

## 14. ORDER OF PRIORITY OF SCHEME DOCUMENTS

- 14.1 The Scheme Documents shall be construed in the following order of priority:
- 14.1.1 this deed, which shall be paramount; then
- 14.1.2 the Scheme Rules; then
- 14.1.3 the Constitution; and then
- 14.1.4 the Deed of Participation and the Guidelines for each Member.

## 15. SURPLUS ON LIQUIDATION OF SCHEME

- 15.1 Upon the winding up of the Scheme (including the liquidation of Trustee Company) the assets, if any, remaining after payment of the debts and liabilities of the Scheme and the costs of winding up ("the surplus assets") shall be distributed among the then Members of the Scheme in proportion to their Contributions to the Scheme over the Fund Year in which the winding up commenced and the previous four Fund Years, provided however that Members whose Contributions are not fully paid up at the commencement of the winding up shall receive only a proportionate share of their entitlement being the amount which is in proportion to the amount of their Contributions paid up. In calculating a Member's Contributions for the purposes of this clause the amount of the Contribution shall be reduced by the amount of any Claim or Claims paid or payable pursuant to the Scheme.

## 16. DEED OF PARTICIPATION

- 16.1 Each Member, as a condition of membership of the Scheme, shall be required to execute under seal and deliver to Trustee Company a Deed of Participation in

the form annexed as Schedule 1, as may be varied or substituted by the Board from time to time, whereby the Member covenants and agrees, for the benefit of Trustee Company and LGIC, to be bound and to observe and perform all the terms of this deed and the other Scheme Documents as if the Member was a party to this Deed and the other Scheme Documents.

16.2 Members shall provide the Scheme Manager with all information as is necessary to give effect to the Scheme and in particular will:

- 16.2.1 Disclose all material facts to the Scheme Manager as if the Member was an insured and the Scheme Manager was an agent for an insurer and;
- 16.2.2 Conduct itself in its dealings with the Scheme in the same manner as if it was an insured under a policy of insurance with the Scheme and in particular act in good faith towards the Scheme.
- 16.2.3 Immediately advise the Scheme Manager of any Underlying Claim and co-operate with the Scheme Manager and Scheme Solicitor in dealing with Underlying Claims.

17. VARIATIONS

17.1 LGIC and Trustee Company may make any variation or addition to this deed if it is consented to in writing by not less than 90% in number of Members, and any such variation or addition shall be binding on all Members.

EXECUTED AS A DEED

EXECUTED by NEW ZEALAND )  
LOCAL GOVERNMENT )  
INSURANCE CORPORATION )  
LIMITED by two of its directors: )

\_\_\_\_\_  
Director (Signature)

\_\_\_\_\_  
Name (Please Print)

EXECUTED by LOCAL )  
GOVERNMENT MUTUAL )  
FUNDS TRUSTEE COMPANY )  
LIMITED by two of its directors: )

\_\_\_\_\_  
Director (Signature)

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_  
Director (Signature)

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_  
Director (Signature)

\_\_\_\_\_  
Name (Please Print)

SCHEDULE 1

DEED OF PARTICIPATION

\_\_\_\_\_  
(Name of Member)

HEREBY DECLARES covenants and agrees for the benefit of Local Government Mutual Funds Trustee Company Limited and New Zealand Local Government Insurance Corporation Limited to be bound by and observe and perform all of the terms of the Deed of Trust establishing the New Zealand Mutual Liability Riskpool and the Scheme Documents referred to in that Deed of Trust as if it was a party to those documents (as amended from time to time).

SIGNED BY \_\_\_\_\_ )

\_\_\_\_\_ )

as the duly authorised agent of \_\_\_\_\_ )  
the Member in the presence of: \_\_\_\_\_ )

\_\_\_\_\_  
(Signature of duly authorised Agent)

\_\_\_\_\_  
(Signature of Witness)

\_\_\_\_\_  
(Name of Witness)

\_\_\_\_\_  
(Address of Witness)

\_\_\_\_\_  
(Date)

