


# RISKPOOL ANNUAL REPORT 2008





# Contents

Liability Riskpool   Mission Statement	1
Chairman's Report	2
Scheme Manager's Operational Overview	4
Risk Management	5
Claims Management	6
Audit Report	8
Statement of Financial Performance	10
Statement of Movements In Trust Funds	12
Statement of Financial Position	14
Statement of Cash Flows	16
Notes to the Financial Statements	18
Scheme Rules	24
2007–08 Fund Year Membership	31
Directory	32
Amalgamated Trust Deed and Deed of Variation of Trust Deed	33



# Liability Riskpool | Mission Statement

- > 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



**Michael Ross**  
CHAIRMAN

Despite major upheavals in financial markets across the globe, Riskpool's investments remain safe. Because of the very conservative investment policies adopted by your Board, there has been no impairment to the value of any of Riskpool's assets.

Riskpool was founded because the insurance industry from time to time had demonstrated inconsistency with the scope and pricing of its cover, claims handling and capacity. It could be that those days will soon return. Riskpool's members should not be concerned – they can expect to retain a quality claims service for the lowest overall long-term cost while being able to enjoy cover of up to \$100 million per member for all risks covered by the scheme.

Riskpool's membership for the year under review and going forward into the 2008/09 year is 78 local authority members out of a possible 85. It is still the Board's goal that the seven local authorities who are not members of Riskpool will reconsider their position and join the fund for 2009/10.

The result for 30 June 2008 shows a deficit for all funds combined of \$1.28 million. This is an improvement over our result for last year (combined deficit at 30 June 2007 was \$2.23 million), but a much larger than expected increase in settlement amounts during 2007-08 has meant that instead of the expected

combined surplus this year we remain in deficit. I can assure you that the Board is focused on this matter and continues to monitor the situation at each meeting.

In an environment where the rate-payer's dollar is being stretched to go even further, it is pleasing to report that total contributions for fund year 11 compared to fund year 10 reduced by \$1.5 million and that total contributions for the current fund year compared to fund year 11 have reduced by a further \$975,000. There are several reasons for this, but a principal one is that our non-leaky claims have dramatically reduced year on year, from over 900 in 1998-99 to less than 300 in 2007-08.

There are two main reasons for our significant downward trend in general claims:

1. It is a product of the good risk management practices promoted by Riskpool and adopted by member councils.
2. Riskpool since its inception has been careful to run litigation where there is an opportunity to improve or clarify the law for local government.

Although gains from the latter can take years to develop, the benefits from those gains are clearly showing through, both for dealing with claims and discouraging them in the first place.



Riskpool continues to invest in this area and as recently as October this year we won a significant motel case confirming that councils should not be expected to pay for other people's commercial risks.

It cannot be emphasized enough: our goal is not just to reduce claims wherever we can. We are here to help our members as much as we can within the limits of our protection wording and with regard to the overall good for the membership. In particular, we take a long-term view of our members' liabilities and are very careful in managing all claims and potential claims to avoid unwanted precedents for future claims. The Board continues to work on strategies that will continue to deliver a scope of insurance cover at a competitive and sustainable price, and contract certainty. We are constantly striving to find ways of reducing the cost to members without impairing the protection offered.

Leaky building settlements, particularly from earlier fund years, continue to make up the bulk of our claims. We commend the efforts of Mayor Prendergast, Mayor Banks and others in their search for a fairer and more cost efficient way of dealing with this major issue. Currently there is too much money being spent on leaky building litigation and not enough on fixing the leaky homes.

During the year, Tim Sole of Civic Assurance and Ray Andrew of Jardine Lloyd Thompson stepped down from the Board. On behalf of the members I thank them both for their significant contributions as directors. Their replacements are Allan Morris, who was previously Chairman of Willis New Zealand (a subsidiary of Willis UK – insurance brokers and underwriters), and Jim Palmer who is currently CEO of Waimakariri District Council.

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

## LOCAL GOVERNMENT MUTUAL FUNDS TRUSTEE LTD – BOARD 2007/08



**A Morris**  
**R Lineham**

**J Palmer**  
**M Ross**

**D Sheard**  
**B Taylor**

## Scheme Manager's Operational Overview



**Paul Carpenter**  
SCHEME MANAGER



**Tim Clarke**  
ASSISTANT SCHEME  
MANAGER

The 2007-08 year of account saw a steady volume of claims made against local authorities throughout New Zealand. But it is the cumulative effect of claims, and the sometimes difficult issues arising from those claims requiring careful management, that underscores the value of Riskpool as local government's mutual liability fund. It is apparent that the model Riskpool is founded upon has been the right one to serve local government through these challenging times.

The number of non-weathertight claims being reported has continued to reduce as our litigation management strategy has resulted in the removal of some uncertain and unfavourable aspects of the law as it relates to local government. Just as importantly, the effect of good risk management practice adopted by our members has reduced the incidence of these types of claims being made.

Weathertightness claims however continue to be made against councils and there appears to be no reduction in the numbers of these claims. This is most likely due to the latency of defects, which means that it can be quite some time before the historical alleged negligence manifests itself as damage and a claim is made. It is unfortunate that more often we are seeing councils left as the 'last man standing' because other defendants and third parties are wound up, insolvent or are not able to significantly contribute toward settlements. Equally, we note an increased exposure to damages awarded by the courts as a consequence of joint and several liability for judgement sums.

That claims environment caused the Board to introduce an aggregate sub-limit of \$500,000 for weathertightness claims at the beginning of the year under review. This step was necessary to protect the Fund and ensure that a good degree of inter-member

equity is maintained. Notwithstanding that, like all underwriting considerations, this is a matter that will remain under review by the Board.

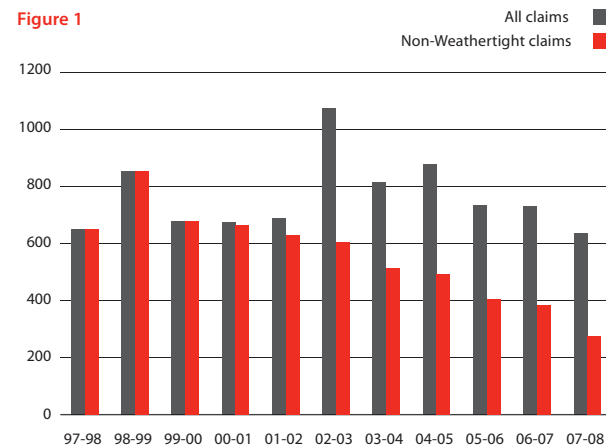
The uncertainty of running cases to trial is illustrated by "*Sunset Terraces*" and "*Byron Avenue*," both cases involving North Shore City Council. The court decided in these cases that it is the intended use of the building that can cause a duty of care to be owed. The council can be held to owe a duty of care to both residential and commercial property owners if the building's intended use was recorded as "residential" on the building consent application, seemingly irrespective of plaintiff vulnerability or general reliance upon the council.

Whilst these decisions achieved some of the objectives Riskpool had when deciding to take them to trial, it should be noted both decisions are under appeal. The Court of Appeal's dismissal of the plaintiffs' appeal in *Te Mata Properties v Hasting District Council* (the High Court held that councils do not owe a duty of care to commercial property owners) which was delivered after "*Sunset Terraces*" and "*Byron Avenue*" may assist us as we manage litigation into the future.

Good risk management practices continue to cause a reduction in the overall non-weathertightness claims out-turn. Targeted risk assessments continued throughout the year with the introduction of a new Land Information Memoranda assessment. We appreciate that many councils were under pressure to achieve Building Consent Authority accreditation, but were available to participate in our liability risk management assessments. We would like to record our appreciation of the time made available to us by council officers during these assessments.

# Risk Management

Last year we reported that we had seen an improvement in risk management practices within councils. We believe the improvement was, amongst other things, due to the result of better documentation, for example, clearly documenting the decision making process. We draw attention to the progressive downward trend illustrated in Figure 1 for non-weathertight claims. These claims are characterised by the relatively short time between the alleged negligence and the claim being made, whereas with building defect claims and weathertightness claims in particular, the damage will lay latent for some years following the alleged negligence. For that reason, we think that non-weathertight claims provide a better indicator for local government's risk management practices. Good risk management practice helps to avoid a claim in the first instance and secondly it assists in building a solid defence to claims.



We also reported last year that due to an increase in the number of LIM claim notifications having progressed from cautionary advice to active claims, we were developing a Land Information Memoranda (LIM) liability assessment. We have carried out a number of these assessments and the results have been varied. We have seen some councils that have robust documented systems and procedures in place and experienced staff. We have also seen some councils that are having difficulty in this area due to a number of reasons, including high staff turnover and limited resources.

We have heard from a number of councils that BCA accreditation has caused them to direct resources away from other regulatory areas to that of building control to deal with the additional duties required as part of the accreditation process. While we understand that councils do not have unlimited resources, we encourage them to actively manage the LIM process and ensure that staff tasked with processing and preparing LIMs are given the appropriate training and resources. Unlike building defect claims where council is one of a number of defendants, when a LIM claim occurs council is likely to be the only defendant to the claim.

Over the next year we will continue to focus on the liability assessments. As well as rolling out the LIM assessment, we will also continue to carry out building control assessments where necessary as this remains the highest risk area. The feedback we receive after the assessment process is very positive and we are pleased councils find the process helpful.

**Raelene James**  
RISK MANAGEMENT  
CONSULTANT



## Claims Management

**8,752 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 eleven years.

	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08
<b>Number of Members</b>	57	70	74	76	79	80	81	83	82 *	82	78
	* Banks Peninsular 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	2007-08
Building Control Matters	176	255	212	173	177	629	398	465	379	384	361
RMA Matters	81	159	86	98	76	90	78	76	47	31	32
Flooding/Blocked Drains	57	90	68	64	58	40	43	57	51	35	23
LIM's	51	57	39	46	36	75	62	79	56	61	38
Landslip/Subsidence	34	42	28	32	26	27	46	27	16	17	10
Sewage Discharge	11	19	12	15	10	14	16	20	15	24	10
Falling Trees	10	12	11	9	8	6	17	10	25	16	11
Defamation	7	9	6	5	4	1	4	3	3	4	2
Other	223	212	219	234	290	196	149	145	146	163	155
<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>882</b>	<b>738</b>	<b>735</b>	<b>642</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>10.7</b>	<b>9</b>	<b>8.9</b>	<b>8.2</b>



The majority of notifications received during the 2007-08 period continued to be weathertight related with common allegations of negligently issued building consents, negligent inspections and the negligent issuing of code compliance certificates.

Compared to previous years regional councils reported fewer claims arising from their pest control and flood protection activities.

Territorial authorities continue to have wide and various claims made against them although weathertightness claims predominate.

Continued proactive claims management resulted in a changed approach to the reserving for weathertightness claims when compared to previous years. Confirmation of the unpredictability of court decisions was received in "*Sunset Terraces*" and "*Byron Avenue*" as the court grapples with the issues these cases bring.

Past decisions in *No. Three Meade Street v Rotorua District Council* and *Te Mata Properties Ltd v Hastings District Council* held that a duty of care is not owed to commercial property owners, probably because plaintiffs are unlikely to be as vulnerable, or there was less likely to be a general reliance on the territorial authority carrying out its Building Act responsibilities.

The "*Sunset Terraces*" and "*Byron Avenue*" decisions delivered during the year under review articulated a "bright-line" test as to

when a duty is owed, in particular if the intended use in a consent application is residential, then a duty will be owed. This would appear to disregard plaintiff vulnerability or a lack of general reliance on the council.

In addition to the unpredictability of recent court decisions and as weathertight claims mature it is becoming more common for the council to be left as the 'last man standing'. This is due to other defendants being insolvent, companies being wound-up or other defendants being unable to meaningfully contribute toward settlements or judgements. This was the case in "*Byron Avenue*" and whilst the court recognised that in practical terms it produces the unfair result of leaving local authorities exposed to damages that ought to be met by other defendants, the court was not the forum to redress that unfairness.

We must therefore allow for this in the accounts.

There has been a deterioration in the claims out-turn for a number of Fund Years. This is due to more frequent, and more expensive settlements. We do not expect to see the same trend for more recent Fund Years due to the underwriting measures taken by the Board.

On a final note, we know that council officers' involvement in the settlement of claims or at trial can be time consuming. We would like to take this opportunity to record our appreciation of the contribution made by each council officer involved in claims this year.

**John Golder**  
CLAIMS ADMINISTRATOR



**Aubrey Hann**  
CLAIMS ADMINISTRATOR



**Greg Morton**  
CLAIMS ADMINISTRATOR



**Liz Lang**  
CLAIMS ADMINISTRATOR



To the readers of  
New Zealand Mutual  
Liability Riskpool's  
financial statements  
for the year ended  
30 June 2008.

## Audit Report

**Deloitte.**

The Auditor-General is the auditor of the New Zealand Mutual Liability Riskpool (the "Scheme"), comprising of Fund 1 to Fund 11 (the "Funds"). The Auditor-General has appointed me, Michael Wilkes, 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 2008.

### 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 2008; and
  - the results of their operations and cash flows for the year ended on that date.

The audit was completed on 21 November 2008, 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.

### ***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 2008. 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 Scheme 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.



**Michael Wilkes**

**DELOITTE**

ON BEHALF OF THE AUDITOR-GENERAL  
WELLINGTON, NEW ZEALAND

# New Zealand Mutual Liability Riskpool

## Statement of Financial Performance for the year ended 30 June 2008

	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)	
		2008	2007	2008	2007	2008	2007	2008	2007	2008	2007
		\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
<b>Revenue</b>											
Members' Contributions		7,107,900	-	-	8,609,539	-	-	-	-	-	250,000
Contribution to expenses from prior fund years		689,895	-	-	397,770	-	-	-	-	-	-
Direct Claims Expense	6	2,772,914	-	1,987,017	2,251,529	1,329,698	2,669,276	(793,121)	(315,419)	8,228	1,609,896
Future Claims Administration Expense	6	708,205	-	-	567,600	-	-	-	-	-	-
Reinsurance Expense		1,279,925	-	-	1,869,277	-	-	-	-	-	-
<b>Net Result for the Period</b>		<b>3,036,751</b>	-	<b>(1,987,017)</b>	<b>4,318,903</b>	<b>(1,329,698)</b>	<b>(2,669,276)</b>	<b>793,121</b>	<b>315,419</b>	<b>(8,228)</b>	<b>(1,359,896)</b>
<b>Investment Revenue</b>		370,001	-	346,477	353,638	142,356	306,353	231,161	252,956	-	68,661
<b>Total Revenue</b>		<b>3,406,752</b>	-	<b>(1,640,540)</b>	<b>4,672,541</b>	<b>(1,187,342)</b>	<b>(2,362,923)</b>	<b>1,024,282</b>	<b>568,375</b>	<b>(8,228)</b>	<b>(1,291,235)</b>
<b>Expenditure</b>											
Risk Management Programme		-	-	-	-	-	-	-	-	-	-
Scheme Manager's Fee		1,294,720	-	-	1,154,228	-	28,540	-	-	-	-
Fund Manager's Fee		224,125	-	-	246,474	-	-	-	-	-	-
Audit Fees		5,630	-	5,224	6,222	2,037	955	2,037	955	2,037	955
Other Fees Paid to Auditors		-	-	-	-	-	-	-	-	-	-
Consultancy		112,963	-	6,938	97,591	-	6,531	-	-	-	-
Directors' Fees		24,500	-	-	-	-	-	-	-	-	-
Meeting/Travel Expenses		15,784	-	-	15,477	-	-	-	(496)	-	(620)
Directors & Officers Liability Insurance		12,600	-	-	14,860	-	-	-	-	-	-
Legal Fees		15,210	-	-	78,885	-	-	-	-	-	-
Printing and Stationery		10,495	-	385	8,500	-	(159)	-	-	-	-
Sundry Expenses		365	-	-	530	-	-	-	-	-	-
Rebate Expense / Trust Income Distribution		-	-	-	-	-	-	-	-	-	-
Bad Debts		-	-	-	-	-	-	-	-	-	-
<b>Total Expenditure</b>		<b>1,716,392</b>	-	<b>12,547</b>	<b>1,622,767</b>	<b>2,037</b>	<b>35,867</b>	<b>2,037</b>	<b>459</b>	<b>2,037</b>	<b>335</b>
<b>Net Surplus/(Deficit) before Tax</b>		1,690,360	-	(1,653,087)	3,049,774	(1,189,379)	(2,398,790)	1,022,245	567,916	(10,265)	(1,291,570)
Tax Expense		617,347	-	(107,703)	1,006,426	(262,723)	(464,535)	(71,687)	(206,863)	(190,269)	(443,647)
<b>Net Surplus/(Deficit) after Tax</b>		<b>1,073,013</b>	-	<b>(1,545,384)</b>	<b>2,043,348</b>	<b>(926,656)</b>	<b>(1,934,255)</b>	<b>1,093,932</b>	<b>774,779</b>	<b>180,004</b>	<b>(847,923)</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	
2008	2007	2008	2007	2008	2007	2008	2007	2008	2007	2008	2007	2008	2007
\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
-	-	-	-	-	-	-	-	-	-	-	370,000	7,107,900	9,229,539
-	-	-	-	-	-	-	-	-	-	-	-	689,895	397,770
95,758	459,918	80,354	29,985	8,224	(424,893)	27,209	314,709	(32,978)	98,702	10,525	(6,635)	5,493,828	6,687,068
-	55,980	-	-	-	-	-	-	35	-	-	-	708,240	623,580
50,000	-	-	-	-	-	-	-	-	-	-	-	1,329,925	1,869,277
<b>(145,758)</b>	<b>(515,898)</b>	<b>(80,354)</b>	<b>(29,985)</b>	<b>(8,224)</b>	<b>424,893</b>	<b>(27,209)</b>	<b>(314,709)</b>	<b>32,943</b>	<b>(98,702)</b>	<b>(10,525)</b>	<b>376,635</b>	<b>265,802</b>	<b>447,384</b>
-	-	-	-	191,422	143,168	117,729	122,071	14,036	18,783	26,484	-	1,439,666	1,265,630
<b>(145,758)</b>	<b>(515,898)</b>	<b>(80,354)</b>	<b>(29,985)</b>	<b>183,198</b>	<b>568,061</b>	<b>90,520</b>	<b>(192,638)</b>	<b>46,979</b>	<b>(79,919)</b>	<b>15,959</b>	<b>376,635</b>	<b>1,705,468</b>	<b>1,713,014</b>
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	1,294,720	1,182,768
-	-	-	-	-	-	-	-	-	-	-	-	224,125	246,474
2,037	955	2,037	955	2,037	955	2,037	955	2,037	955	2,037	955	29,187	14,817
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	119,901	104,122
-	-	-	-	-	-	-	-	-	-	-	-	24,500	-
-	(244)	-	-	-	-	-	-	-	-	-	-	15,784	14,117
-	-	-	-	-	-	-	-	-	(3,935)	-	-	12,600	10,925
5,845	-	-	-	-	-	-	-	-	-	-	-	21,055	78,885
-	-	-	-	-	-	-	-	-	-	-	-	10,880	8,341
25	-	-	-	-	-	-	-	-	-	-	-	390	530
-	-	-	-	-	-	-	-	-	-	-	-	-	-
(1,000,000)	1,000,000	-	-	-	-	-	-	-	-	-	-	(1,000,000)	1,000,000
<b>(992,093)</b>	<b>1,000,711</b>	<b>2,037</b>	<b>955</b>	<b>2,037</b>	<b>955</b>	<b>2,037</b>	<b>955</b>	<b>2,037</b>	<b>(2,980)</b>	<b>2,037</b>	<b>955</b>	<b>753,142</b>	<b>2,660,979</b>
846,335	(1,516,609)	(82,391)	(30,940)	181,161	567,106	88,483	(193,593)	44,942	(76,939)	13,922	375,680	952,326	(947,965)
(23,832)	(18,957)	(6,961)	(18,009)	51,553	187,145	(2,388)	(29,654)	(1,889)	(11,906)	(1,448)	-	-	-
<b>870,167</b>	<b>(1,497,652)</b>	<b>(75,430)</b>	<b>(12,931)</b>	<b>129,608</b>	<b>379,961</b>	<b>90,871</b>	<b>(163,939)</b>	<b>46,831</b>	<b>(65,033)</b>	<b>15,370</b>	<b>375,680</b>	<b>952,326</b>	<b>(947,965)</b>



# New Zealand Mutual Liability Riskpool

## Statement of Movements in Trust Funds for the year ended 30 June 2008

	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)	
	2008	2007	2008	2007	2008	2007	2008	2007	2008	2007
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
<b>Total Trust Funds at 1 July 2007</b>	-	-	2,043,348	-	(2,267,967)	(333,712)	(2,005,685)	(2,780,464)	(3,225,351)	(2,377,428)
Net Surplus/(Deficit)	1,073,013	-	(1,545,384)	2,043,348	(926,656)	(1,934,255)	1,093,932	774,779	180,004	(847,923)
Capital Contribution	-	-	-	-	-	-	-	-	-	-
<b>Total Trust Funds at 30 June 2008</b>	<b>1,073,013</b>	<b>-</b>	<b>497,964</b>	<b>2,043,348</b>	<b>(3,194,623)</b>	<b>(2,267,967)</b>	<b>(911,753)</b>	<b>(2,005,685)</b>	<b>(3,045,347)</b>	<b>(3,225,351)</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	
2008	2007	2008	2007	2008	2007	2008	2007	2008	2007	2008	2007	2008	2007
\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
(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)
870,167	(1,497,652)	(75,430)	(12,931)	129,608	379,961	90,871	(163,939)	46,831	(65,033)	15,370	375,680	952,326	(947,965)
-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>(424,652)</b>	<b>(1,294,819)</b>	<b>260,661</b>	<b>336,091</b>	<b>2,290,255</b>	<b>2,160,647</b>	<b>1,779,824</b>	<b>1,688,953</b>	<b>351,965</b>	<b>305,134</b>	<b>41,330</b>	<b>25,960</b>	<b>(1,281,363)</b>	<b>(2,233,689)</b>

# New Zealand Mutual Liability Riskpool

## Statement of Financial Position as at 30 June 2008

	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)	
		2008	2007	2008	2007	2008	2007	2008	2007	2008	2007
		\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
<b>Trust Funds</b>											
Trust Accounts		1,073,013	-	497,964	2,043,348	(3,194,623)	(2,267,967)	(911,753)	(2,005,685)	(3,191,538)	(3,371,542)
Trust Capital Account		-	-	-	-	-	-	-	-	146,191	146,191
<b>Total</b>		1,073,013	-	497,964	2,043,348	(3,194,623)	(2,267,967)	(911,753)	(2,005,685)	(3,045,347)	(3,225,351)
Represented by:											
<b>Current Assets</b>											
Bank – ANZ Banking Group		330,418	(53,736)	1,283,398	634,669	(183,968)	883,862	1,119,493	57,958	(1,598,331)	51,021
Short Term Bank Deposits		3,670,000	-	2,930,000	4,380,000	-	3,400,000	1,745,000	3,155,000	-	-
Accrued Interest		252,341	-	112,526	64,793	-	63,335	43,688	80,386	-	-
Accounts Receivable		2,000	-	-	22,242	-	-	-	112,500	-	250,000
Prepayments		-	47,765	-	-	-	-	-	-	-	-
Excess Claims Recovery	6	-	-	-	-	3,321,807	-	2,289,395	1,267,644	1,847,481	3,512,396
Provision for Doubtful Debts	2	-	-	-	-	-	-	-	-	-	-
Taxation Receivable/(Payable)		15,705	-	40,008	22,263	55,383	55,383	75,808	32,953	9,580	9,580
GST Receivable/(Payable)		165,543	5,971	68,262	59,544	303,497	15,270	33,852	72,719	(67,454)	119,989
<b>Total Current Assets</b>		4,436,007	-	4,434,194	5,183,511	3,496,719	4,417,850	5,307,236	4,779,160	191,276	3,942,986
<b>Total Assets</b>		4,436,007	-	4,434,194	5,183,511	3,496,719	4,417,850	5,307,236	4,779,160	191,276	3,942,986
<b>Current Liabilities</b>											
Accounts Payable		70,957	-	82,632	37,313	13,208	53,996	12,307	190,356	16,386	1,556
Interfund Payable/(Receivable)		(72,548)	-	717,578	608,656	(777,528)	(713,835)	157,407	52,544	(532,080)	(416,936)
Provision for Rebate		-	-	-	-	-	-	-	-	-	-
Contributions Received in Advance		-	-	-	-	-	-	-	-	-	-
<b>Total Current Liabilities</b>		(1,591)	-	800,210	645,969	(764,320)	(659,839)	169,714	242,900	(515,694)	(415,380)
<b>Claims Provision</b>	6	3,364,585	-	3,136,020	2,494,194	7,455,662	7,345,656	6,049,275	6,541,945	3,752,317	7,583,717
<b>Total Liabilities</b>		3,362,994	-	3,936,230	3,140,163	6,691,342	6,685,817	6,218,989	6,784,845	3,236,623	7,168,337
<b>EXCESS/(DEFICIT) ASSETS OVER LIABILITIES</b>		<b>1,073,013</b>	<b>-</b>	<b>497,964</b>	<b>2,043,348</b>	<b>(3,194,623)</b>	<b>(2,267,967)</b>	<b>(911,753)</b>	<b>(2,005,685)</b>	<b>(3,045,347)</b>	<b>(3,225,351)</b>

Signed on behalf of the Trustee,  
Local Government Mutual Funds Trustee Limited on 21 November 2008.

M Ross  
Director



D Sheard  
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	
2008	2007	2008	2007	2008	2007	2008	2007	2008	2007	2008	2007	2008	2007
\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
(555,817)	(1,425,984)	(115,753)	(40,323)	992,030	862,422	314,553	223,682	79,321	32,490	41,330	25,960	(4,971,273)	(5,923,599)
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
(424,652)	(1,294,819)	260,661	336,091	2,290,255	2,160,647	1,779,824	1,688,953	351,965	305,134	41,330	25,960	(1,281,363)	(2,233,689)
(273,658)	(2,040,523)	(60,739)	(492,347)	1,013,775	944,772	273,063	118,239	94,553	88,321	54,951	(42,165)	2,052,955	150,071
-	-	-	-	1,680,000	1,645,000	1,465,000	1,590,000	200,000	185,000	350,000	-	12,040,000	14,355,000
-	-	-	-	70,809	25,464	51,975	44,197	10,127	4,104	26,484	-	567,950	282,279
-	-	-	-	-	-	-	-	-	-	-	370,000	2,000	754,742
-	-	-	-	-	-	-	-	-	-	-	-	-	47,765
4,209,264	6,570,203	1,401,577	1,835,707	-	-	-	-	-	-	65,500	105,500	13,135,024	13,291,450
-	(1,000,000)	-	-	-	-	-	-	-	-	-	-	-	(1,000,000)
-	-	-	-	42,480	32,156	35,602	19,702	2,684	2,684	-	-	277,250	174,721
(51,463)	(44,739)	(8,037)	(6,382)	5,369	5,258	9,015	6,442	21,933	23,215	(51,851)	(1,884)	428,666	255,403
3,884,143	3,484,941	1,332,801	1,336,978	2,812,433	2,652,650	1,834,655	1,778,580	329,297	303,324	445,084	431,451	28,503,845	28,311,431
3,884,143	3,484,941	1,332,801	1,336,978	2,812,433	2,652,650	1,834,655	1,778,580	329,297	303,324	445,084	431,451	28,503,845	28,311,431
31,392	1,556	1,267	1,556	1,267	1,556	1,267	1,556	1,267	1,556	1,267	1,556	233,217	292,557
47,364	54,116	(365,472)	(361,601)	402,749	350,711	44,673	45,811	(24,630)	(22,741)	402,487	403,275	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-
78,756	55,672	(364,205)	(360,045)	404,016	352,267	45,940	47,367	(23,363)	(21,185)	403,754	404,831	233,217	292,557
4,230,039	4,724,088	1,436,345	1,360,932	118,162	139,736	8,891	42,260	695	19,375	-	660	29,551,991	30,252,563
4,308,795	4,779,760	1,072,140	1,000,887	522,178	492,003	54,831	89,627	(22,668)	(1,810)	403,754	405,491	29,785,208	30,545,120
<b>(424,652)</b>	<b>(1,294,819)</b>	<b>260,661</b>	<b>336,091</b>	<b>2,290,255</b>	<b>2,160,647</b>	<b>1,779,824</b>	<b>1,688,953</b>	<b>351,965</b>	<b>305,134</b>	<b>41,330</b>	<b>25,960</b>	<b>(1,281,363)</b>	<b>(2,233,689)</b>

# New Zealand Mutual Liability Riskpool

## Statement of Cash Flows for the year ended 30 June 2008

	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)	
		2008	2007	2008	2007	2008	2007	2008	2007	2008	2007
		\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
<b>Cash flows from operating activities</b>											
<b>Cash was provided from:</b>											
Members' Contributions		7,107,900	-	-	8,609,539	-	-	-	-	250,000	-
Interest Received–Bank		117,660	-	298,744	288,845	205,691	296,548	267,859	207,614	-	76,215
Reinsurance recoveries received		-	-	-	-	-	-	-	-	-	-
		<b>7,225,560</b>	<b>-</b>	<b>298,744</b>	<b>8,898,384</b>	<b>205,691</b>	<b>296,548</b>	<b>267,859</b>	<b>207,614</b>	<b>250,000</b>	<b>76,215</b>
<b>Cash was applied to:</b>											
Reinsurance		(1,279,925)	-	-	(1,869,277)	-	-	-	-	-	-
Scheme Manager's Fees		(1,283,253)	-	19,771	(1,173,999)	(28,540)	-	-	-	-	-
Fund Manager's Fees		(224,125)	-	-	(246,474)	-	-	-	-	-	-
Legal Fees		(7,710)	-	(7,500)	(71,385)	-	(12,997)	-	-	-	-
Claims		(111,813)	-	(1,056,241)	(324,935)	(4,349,928)	(717,821)	(602,759)	(1,154,299)	(2,086,148)	(2,428,213)
Consultants		(48,942)	(47,765)	(19,013)	(85,516)	-	(13,631)	-	-	-	-
Audit Fees		-	-	(10,320)	-	(2,294)	(1,666)	(2,294)	(1,666)	(2,294)	(1,666)
Other Expenses		(50,089)	-	(8,885)	(30,867)	-	(8,748)	-	496	-	620
Taxation paid		(12,840)	-	(17,745)	(22,263)	-	39,228	(42,855)	1,251,284	-	339,329
Net GST		(152,709)	(5,971)	(82)	(58,999)	(292,759)	28,230	31,584	(6,007)	189,090	(59,159)
<b>Net cash inflow/(outflow) from operating activities</b>	<b>5</b>	<b>(3,171,406)</b>	<b>(53,736)</b>	<b>(1,100,015)</b>	<b>(3,883,715)</b>	<b>(4,673,521)</b>	<b>(687,405)</b>	<b>(616,324)</b>	<b>89,808</b>	<b>(1,899,352)</b>	<b>(2,149,089)</b>
<b>Cash flows from investing activities:</b>											
Net (increase)/decrease in investments		-	-	-	-	-	-	-	-	-	-
<b>Net cash inflow/(outflow) from investing activities</b>		<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Cash flows from financing activities:</b>											
Advances (to) / from other Funds		-	-	-	-	-	-	-	-	-	-
<b>Net cash inflow/(outflow) from financing activities</b>		<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Net increase/(decrease) in cash held</b>		<b>4,054,154</b>	<b>(53,736)</b>	<b>(801,271)</b>	<b>5,014,669</b>	<b>(4,467,830)</b>	<b>(390,857)</b>	<b>(348,465)</b>	<b>297,422</b>	<b>(1,649,352)</b>	<b>(2,072,874)</b>
Opening cash		(53,736)	-	5,014,669	-	4,283,862	4,674,719	3,212,958	2,915,536	51,021	2,123,895
<b>Ending cash</b>		<b>4,000,418</b>	<b>(53,736)</b>	<b>4,213,398</b>	<b>5,014,669</b>	<b>(183,968)</b>	<b>4,283,862</b>	<b>2,864,493</b>	<b>3,212,958</b>	<b>(1,598,331)</b>	<b>51,021</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	
2008	2007	2008	2007	2008	2007	2008	2007	2008	2007	2008	2007	2008	2007
\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
-	-	-	-	-	-	-	-	-	-	370,000	-	7,727,900	8,609,539
-	-	-	-	146,077	155,514	109,951	86,475	8,013	18,123	-	-	1,153,995	1,129,334
2,722,660	-	947,043	-	-	-	-	-	-	-	29,475	-	3,699,178	-
<b>2,722,660</b>	<b>-</b>	<b>947,043</b>	<b>-</b>	<b>146,077</b>	<b>155,514</b>	<b>109,951</b>	<b>86,475</b>	<b>8,013</b>	<b>18,123</b>	<b>399,475</b>	<b>-</b>	<b>12,581,073</b>	<b>9,738,873</b>
(50,000)	-	-	-	-	-	-	-	-	-	-	-	(1,329,925)	(1,869,277)
-	-	-	-	-	-	-	-	-	-	-	-	(1,292,022)	(1,173,999)
-	-	-	-	-	-	-	-	-	-	-	-	(224,125)	(246,474)
(5,845)	-	-	-	-	-	-	-	-	-	-	-	(21,055)	(84,382)
(907,669)	(2,117,344)	(514,764)	(192,465)	(29,313)	357,173	(59,328)	(402,330)	14,263	(95,497)	-	42,509	(9,703,700)	(7,033,222)
-	-	-	-	-	-	-	-	-	-	-	-	(67,955)	(146,912)
(2,294)	(1,666)	(2,294)	(1,666)	(2,294)	(1,666)	(2,294)	(1,666)	(2,294)	(1,666)	(2,294)	(1,666)	(30,966)	(14,994)
(25)	244	-	-	-	-	-	-	-	-	-	-	(58,999)	(38,255)
-	57,339	-	34,204	(10,324)	90,324	(15,900)	82,585	-	15,269	-	428	(99,664)	1,887,727
10,038	(14,843)	1,623	42,560	(143)	(396)	(2,605)	9,215	1,250	(176)	49,935	1,271	(164,778)	(64,275)
<b>(955,795)</b>	<b>(2,076,270)</b>	<b>(515,435)</b>	<b>(117,367)</b>	<b>(42,074)</b>	<b>445,435</b>	<b>(80,127)</b>	<b>(312,196)</b>	<b>13,219</b>	<b>(82,070)</b>	<b>47,641</b>	<b>42,542</b>	<b>(12,993,189)</b>	<b>(8,784,063)</b>
<b>1,766,865</b>	<b>(2,076,270)</b>	<b>431,608</b>	<b>(117,367)</b>	<b>104,003</b>	<b>600,949</b>	<b>29,824</b>	<b>(225,721)</b>	<b>21,232</b>	<b>(63,947)</b>	<b>447,116</b>	<b>42,542</b>	<b>(412,116)</b>	<b>954,810</b>
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-
1,766,865	(2,076,270)	431,608	(117,367)	104,003	600,949	29,824	(225,721)	21,232	(63,947)	447,116	42,542	(412,116)	954,810
(2,040,523)	35,747	(492,347)	(374,980)	2,589,772	1,988,823	1,708,239	1,933,960	273,321	337,268	(42,165)	(84,707)	14,505,071	13,550,261
<b>(273,658)</b>	<b>(2,040,523)</b>	<b>(60,739)</b>	<b>(492,347)</b>	<b>2,693,775</b>	<b>2,589,772</b>	<b>1,738,063</b>	<b>1,708,239</b>	<b>294,553</b>	<b>273,321</b>	<b>404,951</b>	<b>(42,165)</b>	<b>14,092,955</b>	<b>14,505,071</b>

# New Zealand Mutual Liability Riskpool

## Notes to the Financial Statements for the year ended 30 June 2008

### 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.

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) is 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 maturity 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 expected future claims handling costs.

The direct claims expense is presented net of excess recoveries and reinsurance recoveries.

#### *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.

#### *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 Weathertightness 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.

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 2008

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

	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)	
	2008	2007	2008	2007	2008	2007	2008	2007	2008	2007
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
<b>Net Surplus/(Deficit)</b>	1,073,013	-	(1,545,384)	2,043,348	(926,656)	(1,934,255)	1,093,932	774,779	180,004	(847,923)
<b>Add/(less) non cash items</b>										
Claims Provision	3,364,585	-	641,826	2,494,194	(3,211,801)	1,725,181	(1,514,421)	(1,709,980)	(2,166,485)	(827,947)
	<b>3,364,585</b>	<b>-</b>	<b>641,826</b>	<b>2,494,194</b>	<b>(3,211,801)</b>	<b>1,725,181</b>	<b>(1,514,421)</b>	<b>(1,709,980)</b>	<b>(2,166,485)</b>	<b>(827,947)</b>
<b>Add/(less) movements in other working capital items</b>										
Accrued Interest	(252,341)	-	(47,733)	(64,793)	63,335	(9,805)	36,698	(45,342)	-	7,554
GST Receivable	(159,572)	(5,971)	(8,718)	(59,544)	(288,227)	26,119	38,867	(14,396)	187,443	(59,070)
Taxation Receivable	(15,705)	-	(17,745)	(22,263)	-	39,228	(42,855)	1,067,778	-	382,956
Interfund Payable/Receivable	(72,548)	-	108,922	608,656	(63,693)	(256,335)	104,863	149,083	(115,144)	(477,644)
Trust Income Distribution	-	-	-	-	-	-	-	-	-	-
Prepayments	47,765	(47,765)	-	-	-	-	-	-	-	-
Deferred Tax	-	-	-	-	-	-	-	-	-	-
Contribution received in advance	-	-	-	-	-	-	-	-	-	-
Accounts Receivable	(2,000)	-	22,242	(22,242)	-	-	112,500	(112,500)	250,000	(250,000)
Accounts Payable	70,957	-	45,319	37,313	(40,788)	19,010	(178,049)	188,000	14,830	(800)
	<b>(383,444)</b>	<b>(53,736)</b>	<b>102,287</b>	<b>477,127</b>	<b>(329,373)</b>	<b>(181,783)</b>	<b>72,024</b>	<b>1,232,623</b>	<b>337,129</b>	<b>(397,004)</b>
<b>Net cash inflow/(outflow) from operating activities</b>	<b>4,054,154</b>	<b>(53,736)</b>	<b>(801,271)</b>	<b>5,014,669</b>	<b>(4,467,830)</b>	<b>(390,857)</b>	<b>(348,465)</b>	<b>297,422</b>	<b>(1,649,352)</b>	<b>(2,072,874)</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	
2008	2007	2008	2007	2008	2007	2008	2007	2008	2007	2008	2007	2008	2007
\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
870,167	(1,497,652)	(75,430)	(12,931)	129,608	379,961	90,871	(163,939)	46,831	(65,033)	15,370	375,680	952,326	(947,965)
866,890	(601,446)	509,543	(164,299)	(21,574)	(68,800)	(33,369)	(90,021)	(18,680)	2,605	39,340	34,643	(1,544,146)	794,130
<b>866,890</b>	<b>(601,446)</b>	<b>509,543</b>	<b>(164,299)</b>	<b>(21,574)</b>	<b>(68,800)</b>	<b>(33,369)</b>	<b>(90,021)</b>	<b>(18,680)</b>	<b>2,605</b>	<b>39,340</b>	<b>34,643</b>	<b>(1,544,146)</b>	<b>794,130</b>
-	-	-	-	(45,346)	12,345	(7,778)	(35,596)	(6,023)	(660)	(26,484)	-	(285,672)	(136,297)
6,724	(14,754)	1,655	42,649	(110)	(306)	(2,573)	9,304	1,282	(87)	49,967	1,361	(173,262)	(74,695)
-	98,901	-	35,948	(10,324)	185,131	(15,900)	100,559	-	(1,503)	-	991	(102,529)	1,887,726
(6,752)	(60,519)	(3,871)	(17,563)	52,038	93,418	(1,138)	(45,228)	(1,889)	5,466	(788)	667	-	1
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	47,765	(47,765)
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	370,000	(370,000)	752,742	(754,742)
29,836	(800)	(289)	(1,171)	(289)	(800)	(289)	(800)	(289)	(4,735)	(289)	(800)	(59,340)	234,417
<b>29,808</b>	<b>22,828</b>	<b>(2,505)</b>	<b>59,863</b>	<b>(4,031)</b>	<b>289,788</b>	<b>(27,678)</b>	<b>28,239</b>	<b>(6,919)</b>	<b>(1,519)</b>	<b>392,406</b>	<b>(367,781)</b>	<b>179,704</b>	<b>1,108,645</b>
<b>1,766,865</b>	<b>(2,076,270)</b>	<b>431,608</b>	<b>(117,367)</b>	<b>104,003</b>	<b>600,949</b>	<b>29,824</b>	<b>(225,721)</b>	<b>21,232</b>	<b>(63,947)</b>	<b>447,116</b>	<b>42,542</b>	<b>(412,116)</b>	<b>954,810</b>



# New Zealand Mutual Liability Riskpool (continued)

## Notes to the Financial Statements for the year ended 30 June 2008

### Note 6. Claims

	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)	
	2008	2007	2008	2007	2008	2007	2008	2007	2008	2007
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
<b>Cumulative Claims Experience</b>										
Claims provision	3,364,585	-	3,136,020	2,494,194	7,455,662	7,345,656	6,049,275	6,541,945	3,752,317	7,583,717
Claims paid–Current year	116,534	-	1,128,566	324,935	4,342,469	734,378	544,750	1,263,179	2,099,588	2,373,402
Claims paid–Prior year(s)	-	-	324,935	-	861,207	125,312	2,242,775	1,020,654	4,631,401	2,203,188
Claims paid–Prior Year(s) adjustments	-	-	-	-	-	1,517	-	(41,058)	-	54,811
<b>Gross claims incurred (Paid and estimated)</b>	<b>3,481,119</b>	<b>-</b>	<b>4,589,521</b>	<b>2,819,129</b>	<b>12,659,338</b>	<b>8,206,863</b>	<b>8,836,800</b>	<b>8,784,720</b>	<b>10,483,306</b>	<b>12,215,118</b>
Less reinsurance received	-	-	-	-	-	-	-	-	-	-
Less reinsurance recoverable	-	-	-	-	(3,321,807)	-	(2,289,395)	(1,267,644)	(1,847,481)	(3,512,396)
<b>Total Net Claims</b>	<b>3,481,119</b>	<b>-</b>	<b>4,589,521</b>	<b>2,819,129</b>	<b>9,337,531</b>	<b>8,206,863</b>	<b>6,547,405</b>	<b>7,517,076</b>	<b>8,635,825</b>	<b>8,702,722</b>
<b>Claims Reconciliation</b>										
Claims Provision 30 June 2007	-	-	2,494,194	-	7,345,656	5,620,475	6,541,945	8,382,188	7,583,717	8,440,265
Claims Paid	(116,534)	-	(1,128,566)	(324,935)	(4,342,469)	(734,378)	(544,750)	(1,263,179)	(2,099,588)	(2,373,402)
Reassessment of prior years claims	-	-	1,770,392	-	1,130,668	2,461,076	(969,671)	(487,859)	(66,897)	1,600,266
Reinsurance recoveries received	-	-	-	-	-	-	-	-	-	-
Current year's claims received	3,481,119	-	-	2,819,129	-	-	-	-	-	-
Claims paid–Prior year(s) adjustments	-	-	-	-	-	(1,517)	-	41,058	-	(54,811)
Movement in excess of claims recovery	-	-	-	-	3,321,807	-	1,021,751	(130,263)	(1,664,915)	(28,601)
<b>Claims Provision at 30 June 2008</b>	<b>3,364,585</b>	<b>-</b>	<b>3,136,020</b>	<b>2,494,194</b>	<b>7,455,662</b>	<b>7,345,656</b>	<b>6,049,275</b>	<b>6,541,945</b>	<b>3,752,317</b>	<b>7,583,717</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,  
Fund 10 \$6,000,000 and Fund 11 \$1,500,000. However Funds 7 and thereafter do not have reinsurance cover for WHRS  
“leaky homes” claims.

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	
2008	2007	2008	2007	2008	2007	2008	2007	2008	2007	2008	2007	2008	2007
\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
4,230,039	4,724,088	1,436,345	1,360,932	118,162	139,736	8,891	42,260	695	19,375	-	660	29,551,991	30,252,563
934,448	2,128,944	514,764	149,643	29,313	41,165	59,328	108,043	(14,263)	1,416	-	(6,357)	9,755,497	7,118,748
5,752,826	3,635,482	3,571,198	3,379,104	1,262,676	1,619,849	1,970,828	1,568,498	2,104,231	2,008,734	2,125,015	2,167,523	24,847,092	17,728,344
-	(11,600)	-	42,451	-	(398,338)	-	294,287	-	94,081	-	(36,151)	-	-
<b>10,917,313</b>	<b>10,476,914</b>	<b>5,522,307</b>	<b>4,932,130</b>	<b>1,410,151</b>	<b>1,402,412</b>	<b>2,039,047</b>	<b>2,013,088</b>	<b>2,090,663</b>	<b>2,123,606</b>	<b>2,125,015</b>	<b>2,125,675</b>	<b>64,154,580</b>	<b>55,099,655</b>
(2,722,660)	-	(947,043)	-	-	-	-	-	-	-	(29,475)	-	(3,699,178)	-
(4,209,264)	(6,570,203)	(1,401,577)	(1,835,707)	-	-	-	-	-	-	(65,500)	(105,500)	(13,135,024)	(13,291,450)
<b>3,985,389</b>	<b>3,906,711</b>	<b>3,173,687</b>	<b>3,096,423</b>	<b>1,410,151</b>	<b>1,402,412</b>	<b>2,039,047</b>	<b>2,013,088</b>	<b>2,090,663</b>	<b>2,123,606</b>	<b>2,030,040</b>	<b>2,020,175</b>	<b>47,320,378</b>	<b>41,808,205</b>
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
(934,448)	(2,128,944)	(514,764)	(149,643)	(29,313)	(41,165)	(59,328)	(108,043)	14,263	(1,416)	-	6,357	(9,755,497)	(7,118,748)
78,678	515,898	77,264	27,795	7,739	(425,973)	25,959	312,309	(32,943)	98,102	9,865	(7,865)	2,031,054	4,093,749
2,722,660	-	947,043	-	-	-	-	-	-	-	29,475	-	3,699,178	-
-	-	-	-	-	-	-	-	-	-	-	-	3,481,119	2,819,129
-	11,600	-	(42,451)	-	398,338	-	(294,287)	-	(94,081)	-	36,151	-	-
(2,360,939)	1,137,611	(434,130)	(2,165,199)	-	-	-	-	-	-	(40,000)	(41,856)	(156,426)	(1,228,308)
<b>4,230,039</b>	<b>4,724,088</b>	<b>1,436,345</b>	<b>1,360,932</b>	<b>118,162</b>	<b>139,736</b>	<b>8,891</b>	<b>42,260</b>	<b>695</b>	<b>19,375</b>	<b>-</b>	<b>660</b>	<b>29,551,991</b>	<b>30,252,563</b>

The outstanding claims provision for Fund 6 of \$4,230,039, Fund 7 of \$3,752,317, Fund 8 of \$6,049,275, Fund 9 of \$7,455,662, Fund 10 of \$3,136,020 and Fund 11 of \$3,364,585 include a provision for WHRS "leaky building" claims (GST exclusive) of \$1,202,762, \$1,706,699, \$1,259,996, \$3,302,351, \$1,680,819 and \$1,404,037 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 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.

## 2007–08 Fund Year Membership


Ashburton District Council  
Auckland City Council  
Auckland Regional Council  
Banks Peninsula District Council  
Carterton District Council  
Central Hawke's Bay District Council  
Central Otago District Council  
Chatham Islands 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  
Hamilton City Council  
Hastings District Council  
Hauraki District Council  
Hawke's 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  
Tararua 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  
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 6142  
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 6011																
Directors	<table><tr><td>Michael Ross (Chairman)</td><td>Oamaru</td></tr><tr><td>Alan Morris (from 1/12/07)</td><td>Auckland</td></tr><tr><td>Bob Lineham</td><td>Christchurch</td></tr><tr><td>Jim Palmer (from 1/12/07)</td><td>Christchurch</td></tr><tr><td>Denis Sheard</td><td>Auckland</td></tr><tr><td>Bryan Taylor</td><td>Auckland</td></tr><tr><td>Raymond Andrew (until 1/12/07)</td><td>Auckland</td></tr><tr><td>Timothy Sole (until 1/12/07)</td><td>Wellington</td></tr></table>	Michael Ross (Chairman)	Oamaru	Alan Morris (from 1/12/07)	Auckland	Bob Lineham	Christchurch	Jim Palmer (from 1/12/07)	Christchurch	Denis Sheard	Auckland	Bryan Taylor	Auckland	Raymond Andrew (until 1/12/07)	Auckland	Timothy Sole (until 1/12/07)	Wellington
Michael Ross (Chairman)	Oamaru																
Alan Morris (from 1/12/07)	Auckland																
Bob Lineham	Christchurch																
Jim Palmer (from 1/12/07)	Christchurch																
Denis Sheard	Auckland																
Bryan Taylor	Auckland																
Raymond Andrew (until 1/12/07)	Auckland																
Timothy Sole (until 1/12/07)	Wellington																
Scheme Manager	Jardine Lloyd Thompson Limited																
Fund Manager	Civic Assurance																
Scheme Solicitors	Heaney & Co																
Scheme Auditors	Auditor General who has appointed M Wilkes of 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:	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.
		4.2.1	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;		(iv) to the limit of any guarantee provided by LGIC, by LGIC.

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;		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.	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.
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	5.5	No director may hold office for more than twelve years, whether continuously or in aggregate over several periods.	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.
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.	6.	<b>DUTIES OF THE BOARD</b>	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.
5.	<b>BOARD OF TRUSTEE COMPANY</b>	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:	6.5	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.
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.	6.1.1	Implementing and achieving the purposes and objects of the Scheme;	6.6	The Board shall be responsible for the financial management of the Scheme to the extent that it shall:
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.	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;	6.6.1	annually prepare the financial statements and, where considered necessary, report to the Members on any items arising from those statements;
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.	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;		
5.4	Subject to the provisions of this deed and any applicable law, LGIC shall determine, from time to time,	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.		

This is an amalgamation of the Deed of Trust dated 1 July 1997 and the Deed of Variation of Deed of Trust dated 22 June 2007. If necessary reference should made to the provisions of the original documents which take precedence.

6.6.2	annually determine the Guidelines for the Risks to be provided for from the Fund for any Fund Year;		disestablishment), and any reference in this deed to the Claims Committee shall be read accordingly.		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:
		6.10.3	shall, on written request from a Member, reconsider any Claim that has been rejected.		
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	6.11	[Intentionally Omitted]		
		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 as the Contributions paid by each of the Members to	6.16.1	a Member shall have one vote;
				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.

**EXECUTED AS A DEED**

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

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.

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

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

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

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

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

**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.

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

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

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

\_\_\_\_\_  
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)

This is an amalgamation of the Deed of Trust dated 1 July 1997 and the Deed of Variation of Deed of Trust dated 22 June 2007. If necessary reference should made to the provisions of the original documents which take precedence.

