



OFFICE OF THE  
CONTROLLER AND AUDITOR-GENERAL.  
*Te Mana Arotake*

24 November 1999

Our Ref: LG20-0071

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Chief Financial Officer  
Wellington Regional Council  
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WELLINGTON

David Cruickshank  
Chief Financial Officer  
Wellington City Council  
P O Box 2199  
WELLINGTON

FILE NO	16/27/18 / (	
TO NOTE	INIT	DATE
G Schollum		
TO ACTION		

Dear Greg and David

**WELLINGTON REGIONAL STADIUM TRUST**

I refer to your letter of 17 November '1999.

We have reviewed our previous advice on this matter in the light of the amended definition of LATE applying from 1 April 1999. We agree with Chapman Tripp that the Stadium Trust is less likely to be within the definition of LATE as amended.

The amended definition includes:

An organisation that-

- (A) Operates a trading undertaking with the intention or purpose of making a profit; and
- (B) Is subject to significant control, directly or indirectly, by 1 or more local authorities.

Under paragraph (iv) of the previous definition, it was sufficient for an organisation under local authority control to operate a trading undertaking. However, the amended definition requires an organisation to operate a trading undertaking with the intention or purpose of making a profit.

It is not necessary to consider whether the Trust operates a trading undertaking if it does not have the intention or purpose of making a profit.

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When we previously considered the provisions in the Trust Deed concerning application of income of the Trust and winding up we noted that:

- The Councils have no interest in the income of the Trust, apart from the entitlement to annual loan repayments from any surplus funds, unless the obligation to repay is suspended by the Councils; and
- The Councils have no interest in the residual assets of the Trust on winding up, except to the extent of any amount outstanding on the loans. If residual assets exist the Trustees may, with the approval of the Councils, distribute such assets to charitable purposes in the Wellington region.

Having regard to those provisions and the statutory functions of the Trust we remain of the view that the Trust is not an organisation which performs its functions and objects with the intention or purpose of making a profit.

We therefore agree that it is unlikely to be within the amended definition of LATE.

#### *Income Tax Act 1994*

We previously advised that should the Trust form a management company, that would affect whether the Trust itself is a LATE. This may still be the case. However it is clear that the Trust's status, for tax purposes at least, would be affected.

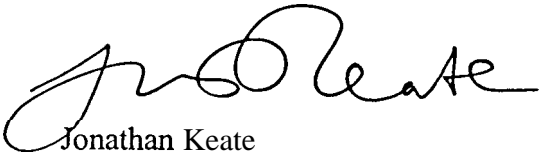
The definition of LATE in the Income Tax Act 1994 is wider than the definition of LATE in the Local Government Act. The Income Tax Act definition applying from the 1999/2000 income year includes-

- (a) A local authority trading enterprise (as defined in section 594B of the Local Government Act 1974):
- (b) An organisation (as defined in section 594B(2) of the Local Government Act 1974) that—
  - (i) Is subject to significant control (as defined in section 594B(2) of that Act), directly or indirectly, by 1 or more local authorities; and
  - (ii) Has significant control (as so defined), directly or indirectly, of a local authority trading enterprise within the meaning of paragraph (a).

Should the Trust have significant control of an operating company that is a LATE under the Local Government Act then the Trust will be a LATE for income tax purposes and this would affect its eligibility for charitable tax status.

I presume the Trust will have sought its own legal and tax advice in this area.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jonathan Keate', written in a cursive style.

Jonathan Keate  
for Assistant Auditor-General – Legal

( )  
Copy Chris Fabling, Audit New Zealand, Wellington