



# Riskpool

NEW ZEALAND MUTUAL  
LIABILITY RISKPOOL

**ANNUAL REPORT 2010**

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## 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.



**Bryan Taylor**  
CHAIRMAN

## CHAIRMAN'S REPORT

Riskpool is a mutual liability fund that operates for the benefit of its members, which exclusively are councils and council controlled organisations. Riskpool has been operating since 1997. In the 13 years to 30 June 2010 it received notification of 9836 claims, an average of 9.9 claims per member per year. A breakdown of those claims by type is provided in the Scheme Manager's report on page 6.

These statistics confirm that in the last few years Riskpool has been dominated by leaky building claims, many of which involve large sums of money. The Board needed to make a call during the year and signalled the need for future calls. The Board was conscious of the effect that the call might have on members generally and smaller councils in particular, but none of the various alternative approaches for funding the leaky building claims considered by the Board proved to be workable within the agreed terms of membership of Riskpool. I note however that five of the larger metropolitan councils agreed to fund their total share of all calls up front, which significantly assisted cash flow.

For the current fund year, Fund 14, Riskpool has all of its exposures fully covered by reinsurance.

Feedback on the call from members has reminded the Board of the importance of regular and timely engagement with members. The Board has commenced a performance review, as part of which it will consider how Riskpool is best organised and supported into the future in order to meet members' needs.

The claim statistics also demonstrate that Riskpool deals with many other types of claim in addition to leaky building claims. Members continue to receive comprehensive liability cover through Riskpool at very competitive rates and to have their claims settled on satisfactory terms.

Notwithstanding additional revenue in the 2009-10 year of \$6,679,350 from calls, this year's accounts show a slight worsening of the overall deficit. This is because the cost of leaky building settlements and provisions has continued to grow. There are a number of reasons for this, but the two main reasons are a greater awareness of the cost of repairs resulting in harder settlement bargaining by claimants and the increasing frequency with which the Council is the 'last man standing'. It is yet too early to tell what effect, if any, the Financial Assistance Package announced by the Government in May 2010 may have upon Riskpool's financial position.

The trend for leaky building settlements and provisions to grow is largely limited to claims through the Weathertight Homes Tribunal, which from Fund 7 onwards are not covered by Riskpool's reinsurance. Leaky building claims through the High Court, which for Funds 7 to 9 were reinsured, have generally been settling for less than reserves. Consequently the total amount expected to be recovered by Riskpool from its reinsurers has reduced from \$78 million to \$55 million, of which \$13 million had already been recovered by balance date. All of Riskpool's reinsurers have a credit rating of A or better. Total claims paid or to be paid by Riskpool before reinsurance recoveries for the first 13 years of its operation are estimated at \$138 million.

In an environment where the rate-payer's dollar is being stretched even further, it is pleasing to report that the average member contribution dropped from \$105,000 in Fund 10 to under \$60,000 in the year just completed, Fund 13. In part this is because Riskpool has stepped away from providing leaky building cover to the majority of its members, but the average Riskpool contribution for Fund 13 is still less than it was ten years ago despite the increase in the range of councils' responsibilities over that time and an increasing willingness by the public and the courts to try to find liability when something goes wrong.

This reduction in the average member contribution has been possible because over the last 13 years Riskpool has been proactive in two key areas:

1. Risk management – The good risk management practices promoted by Riskpool and adopted by member councils have resulted in reduced claims exposure. This is clearly demonstrated by the claims statistics in the Scheme Manager’s report;
2. Claims management – Riskpool has been careful in its case management to pursue litigation where there is an opportunity to improve or clarify the law for local government or to avoid unwanted precedents. Examples of this are also provided in the Scheme Manager’s report. Although gains from this sort of litigation can take years to develop, the benefits are now clearly showing through, both for dealing with claims and perhaps more importantly discouraging them in the first place.

It cannot be emphasized enough – our role is not just about reducing the cost of claims paid (although we do work very hard at that), but extends to include helping our members as much as we can within the reasonable parameters of our protection wording and with regard to the overall wellbeing of the local government sector. An independent assessment of the wider benefits of Riskpool to its members was undertaken by BERL in March 2010 and a copy of that report is provided on page 35. The report confirms that the benefits of membership of Riskpool to the sector are more than financial and that Riskpool can be proud of its achievements to date.

Riskpool has played, and continues to play, an important and valuable role in the local government liability sector. Despite that success, there is room for further improvement and the Board remains committed to the core values that underpinned the formation of Riskpool. Listening to members’ concerns and responding to their

needs remains a first priority and we will be making continuing efforts in that regard over the coming year.

Riskpool 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.



**Bryan Taylor**  
CHAIRMAN

## LOCAL GOVERNMENT MUTUAL FUNDS TRUSTEE LIMITED BOARD



D Sheard, J Palmer, B Taylor, A McKenzie, A Morris, R McLeod

## SCHEME MANAGER'S OPERATIONAL OVERVIEW



**Paul Carpenter**  
SCHEME MANAGER

The year under review saw claims activity dominated by a significant number of large multi-unit building defect claims incurred some years ago reaching maturity and settlement. This has coincided with the economic downturn which has seen the Councils involved as the only judgement worthy defendant left in settlement negotiations. The effect of "joint and several" liability for damages and the further deterioration in the litigation environment in the latter part of 2009 has seen Local Government bear a disproportionate burden of weathertight claims when measured against apportionment measures adopted by the courts.

These changes have caused a revaluation of underlying claims during the year and this in turn led to an increase in projected deficits, notwithstanding the \$4 million call announced last year, yet accounted for in the year under review.

The deficits as they appear in the accounts were foreshadowed in our last Annual Report and they led to the announcement of a call for \$9 million payable on 1 July 2010 and an indication of a call of \$9 million payable on 1 July 2011 and again in July 2012. Of course these are post balance date events but we mention them as they relate to an announcement that was made during the year under review. We would like to acknowledge the five metropolitan territorial authorities that agreed to pay these calls in advance to ease the cashflow burden on other members.

Also during the year, the Government announced its financial assistance package for homeowners whereby Central and Local Government contribute 25% of remedial costs each and the homeowner carries 50%, but with the right to pursue other potentially liable parties, but not Central Government or the Council. We suspect that the financial assistance package will be attractive to those with relatively modest claims, but not to those with larger claims. The immediate effect has been a reasonable number of claimants with modest claims putting those claims "on hold" pending further information, but ultimately, we suspect that the package will have little impact upon the claims liability for Riskpool as currently forecast.

Local Government is facing a liability claims legacy borne out of systemic

failures within the building industry and a deteriorating litigation environment. Little can be done about that. However, we do have the opportunity to carefully manage each underlying claim so as to ensure the best outcome for Local Government, and where possible make every effort to achieve better legal precedent for the sector.

The Board has monitored the development of weathertight claims and has from time to time made underwriting changes based on information and circumstances at those times. Those changes have been:

- The application of a minimum excess for Weathertight Homes Resolution Service/Tribunal claims of \$50,000 on all open claims over all years;
- The introduction of a multi-unit exclusion in Fund 10 for Councils with a frequency of these claims;
- The introduction of a \$500,000 annual aggregate sub-limit for all weathertight claims for each member for Funds 11 and 12 to limit the Fund's exposure to any Councils with a frequency or severity of claims; and
- The introduction of an exclusion for weathertight claims from 30 June 2009 except for 23 low risk Councils, for which the \$500,000 annual aggregate cover was maintained and is the subject of reinsurance protection.

Each step was taken based on information available at the relevant time, and with a view to providing as much protection to Councils as was thought appropriate. The last point is an important one as it means the cover provided by the Fund is fully supported by reinsurance. A key objective of the Fund has always been to providing sustainable and affordable protection to its members and we believe that this has been achieved as many members saw a contribution reduction for the 2009-10 Fund Year.

Of course there were other categories of claims during the year with resource consent matters, flood related claims including a number arising from larger flood events and claims involving allegedly negligently issued Land Information Memoranda being prominent.

# RISK MANAGEMENT

It has been an interesting and varied year. As you will see from Figure 1 we have not seen a pattern of decline in our non-weather-tight claims as we would have ordinarily expected. We think some new and emerging issues have masked a decline in claim notifications and have therefore kept the figures up. As an example, we have had an increase in claim notifications following a number of severe weather events, as well as matters such as Council management of information surrounding clandestine drug labs.

We are pleased to report that we've had a number of claims successfully struck out this year. We believe the success can be attributed to the good risk management practices of the Councils involved. This enabled us to present a litigation management strategy that wouldn't otherwise have been available to us in the absence of robust documentation maintained by those Councils. If it weren't for the detailed documentation maintained there could have been very different outcomes.

It is pleasing to see that our help desk has been particularly well utilised this year. The help desk provides an opportunity for you to talk to us about any liability issues you may have. It also enables us to work through potential issues to hopefully prevent them from progressing further. This year we've had an increase in the number of enquiries relating to what information should or should not be included in LIMs

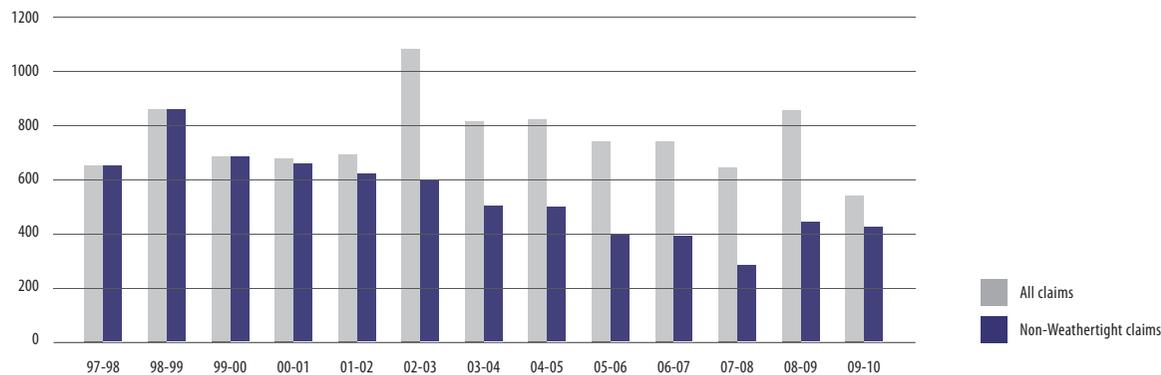
or PIMs in certain circumstances. It's encouraging to see so many Councils thinking more about this as the omission of mandatory information, or conversely, the addition of incorrect information in a LIM or a PIM has the potential to expose Council to significant liability.

As a result of a number of events during the year, particularly with regard to flood events, we have received a number of calls for advice surrounding the issues of regulatory responsibilities, and information management. Post-balance date, the Canterbury earthquake struck and we will of course be available to address similar risk management issues that will undoubtedly emerge from that event. We will deal with those matters if and when they arise.

The important thing to remember following any event is to involve us early on in the process. Often, if we are involved early enough, we can prevent the issue escalating so please do not hesitate to contact us in relation to any potential liability matters. In these difficult economic times some people may look to Councils and claim they received negligent advice as there is a perception that Councils are 'up for it'.

We have enjoyed working with our members this year and we appreciate the continued willingness of our members to participate in the liability assessment programme. We look forward to working with you all in the coming year.

FIGURE 1



**Raelene James**  
RISK MANAGEMENT  
CONSULTANT



## CLAIMS MANAGEMENT

9,836 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 thirteen years.

	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
<b>Number of Members</b>	57	70	74	76	79	80	81	83	82	82	78	78	72
<b>Cause of Claim/ Notification</b>													
Building Control Matters	176	255	212	173	177	629	398	465	379	384	361	479	169
RMA Matters	81	159	86	98	76	90	78	76	47	31	32	58	71
Flooding/Blocked Drains	57	90	68	64	58	40	43	57	51	35	23	33	69
LIM's	51	57	39	46	36	75	62	79	56	61	38	53	54
Landslip/Subsidence	34	42	28	32	26	27	46	27	16	17	10	40	17
Sewage Discharge	11	19	12	15	10	14	16	20	15	24	10	7	13
Falling Trees	10	12	11	9	8	6	17	10	25	16	11	13	11
Defamation	7	9	6	5	4	1	4	3	3	4	2	0	2
Other	223	212	219	234	290	196	149	145	146	163	155	186	126
<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>869</b>	<b>532</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>	<b>11.1</b>	<b>7.4</b>

The reduction in building control claims is the result of the weathertight claim exclusion introduced at the beginning of the year under review for most Councils. Most of the claims notified are by Councils with the exclusion, but have taken advantage of our claim management services notwithstanding an exclusion applying, or allegedly involve non-weathertight building defects.

If weathertight claims are excluded, the claims per member would appear to be continuing an upward trend. This is most likely to be due to claimants increasingly looking to recover alleged losses from local authorities in a difficult economic environment and the public's general perception that Councils are liable for those losses where in fact, in many cases, there may be no liability at law.

After 13 years of operations, we have developed a body of case law that has created greater certainty for, and generally to the benefit of, Local Government. The following paragraphs set out some of those cases as they relate to the three main financial categories of claims against Councils.

### BUILDING CONTROL

Building defect claims involve the alleged negligent issuing of building consents, allegedly negligent inspections during the course of construction and the issuing of allegedly erroneous Code Compliance Certificates which might be relied upon by third parties. We combine the implementation of good risk management practice with an aggressive but strategic approach to litigation. The reason for the latter is that it can take some time for the benefits of good risk management practice to emerge due to the latency of some building defects.

Notwithstanding that, good risk management practice and comprehensive Council documentation has enabled us to run successful litigation to establish a reasonable level for the duty of care or for strengthening affirmative defences.

- *No Three Meade Street v Rotorua District Council* – Councils owe no duty of care to commercial property owners. This has been confirmed in a number of subsequent cases, most notably in *Charterall Trustees v Queenstown Lakes District Council*.
- *Te Mata Properties v Hastings District Council* – Councils owe no duty of care to non-vulnerable plaintiffs who can otherwise protect their interests for example through the engagement of clerks of works, project managers or otherwise protect their interests through contractual warranties, but chose not to.
- *Dicks v Waitakere City Council* – directors of liquidated or wound up building companies, or others involved in the building process, can be found personally liable.
- *Hartley v Waitakere City Council* – plaintiffs can be found liable for failing to mitigate their losses, 33% in this case.
- “Byron Avenue” and “Sunset Terraces” – builders and developers who participated in the building project cannot hide behind liquidated companies. These cases are on further appeal to the Supreme Court.
- *Scandle v Far North District Council and Auckland City Council v McNamara* – the courts will generally not impose a liability on a territorial authority for the negligence of a private certifier, even if the private certifier was not properly accredited to do the work undertaken.

Of note however, has been an increase in notifications involving Council Project Information Memoranda processes allegedly giving rise to breaches of city or district plans.

## RESOURCE CONSENTS

These claims tend to more quickly follow an alleged negligent act as the activity the subject of a consent will generally become obvious to an affected party. Consent applicants that bring claims tend to do so reasonably quickly. Our strategies for managing these claims include a rigorous application of the test for negligence and the measure of damages for negligence.

- *Bella Vista Limited v Western Bay of Plenty District Council* – Councils do not owe a duty of care to protect the economic interests of others when discharging their responsibilities under the Resource Management Act 1991.

## LAND INFORMATION MEMORANDA

These claims largely reflect the nature of the New Zealand property market. That market has slowed in recent years but the proportion of notifications that become active claims has increased. It may take some time to see the slow-down in the property market to be reflected in claim numbers. Notwithstanding that, these claims are characterised by being relatively modest in cost. Extensive risk management initiatives have been developed and are currently being implemented within Councils. In addition to that, we have run the first case involving an allegedly negligently issued LIM.

- *Altimarlock Limited v Marlborough District Council* – it was alleged that the Council omitted information (that arguably was not mandatory information) in a LIM. The court confirmed that Council's owe a duty of care when releasing information in a LIM. The decision is being appealed upon a number of grounds, but in the meantime we have implemented a risk management strategy for non-mandatory information.

**Aubrey Hann**  
CLAIMS MANAGER



**Greg Morton**  
CLAIMS ADMINISTRATOR



**Paul Murray**  
CLAIMS ADMINISTRATOR



To the readers of  
New Zealand Mutual  
Liability Riskpool's  
Financial Statements  
for the year ended  
30 June 2010

## AUDIT REPORT

The Auditor-General is the auditor of the New Zealand Mutual Liability Riskpool (the "Scheme"), comprising of Fund 1 to Funds 14 (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 Scheme, on her behalf, for the year ended 30 June 2010.

### UNQUALIFIED OPINION

In our opinion:

The financial statements of the Fund's on pages 10 to 24:

- comply with generally accepted accounting practice in New Zealand;
- fairly reflect:
  - the Fund's financial position as at 30 June 2010; and
  - the results of its operations and cash flows for the year ended on that date
- Based on our examination, the Scheme kept proper accounting records.

The audit was completed on 2 November 2010 and is the date at which our opinion is expressed.

The basis of our opinion 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. The financial statements must fairly reflect the financial position of the Scheme as at 30 June 2010 and 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 taxation compliance services 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 2010

	Note	Fund No. 14 (10-11)	Fund No. 13 (09-10)		Fund No. 12 (08-09)		Fund No. 11 (07-08)	
		2010	2010	2009	2010	2009	2010	2009
		\$	\$	\$	\$	\$	\$	\$
<b>Revenue</b>								
Members' Contributions		-	4,098,500	-	-	6,215,923	-	-
Calls Received	7	-	-	-	-	-	-	-
Calls received in Advance	7	-	-	-	824,705	-	696,573	-
Contribution to expenses from prior fund years		-	7,999	-	-	1,462,570	-	-
Direct Claims Expense	8	-	952,696	-	1,095,704	6,904,689	(73,105)	4,232,583
Future Claims Administration Expense	8	-	621,066	-	332,534	554,070	8,533	-
Reinsurance Expense		-	1,466,300	-	-	1,311,756	-	-
<b>Net Result for the Period</b>		-	<b>1,066,437</b>	-	<b>(603,533)</b>	<b>(1,092,022)</b>	<b>761,145</b>	<b>(4,232,583)</b>
<b>Investment Revenue</b>		-	28,450	-	37,262	208,362	34,982	236,170
<b>Total Revenue</b>		-	<b>1,094,887</b>	-	<b>(566,271)</b>	<b>(883,660)</b>	<b>796,127</b>	<b>(3,996,413)</b>
<b>Expenditure</b>								
Risk Management Programme		-	-	-	-	-	-	-
Scheme Manager's Fee		-	1,294,720	-	20,148	1,294,720	-	(4,179)
Fund Manager's Fee		-	262,306	-	-	255,626	-	-
Audit Fees		-	7,407	-	2,813	7,407	2,026	9,417
Other Fees Paid to Auditors		-	20,000	-	-	7,400	-	11,000
Consultancy		-	99,831	-	24,174	69,949	-	15,327
Directors' Fees		-	50,854	-	-	41,348	-	-
Meeting/Travel Expenses		-	39,271	-	3,887	14,972	-	-
Directors & Officers Liability Insurance		-	12,600	-	-	12,600	-	-
Legal Fees		-	530	-	-	26,295	-	-
Printing and Stationery		-	11,144	-	-	9,458	-	(287)
Sundry Expenses		-	2,540	-	-	473	-	-
Rebate Expense/Trust Income Distribution		-	-	-	-	-	-	-
Bad Debts		-	-	-	-	-	-	-
<b>Total Expenditure</b>		-	<b>1,801,203</b>	-	<b>51,022</b>	<b>1,740,248</b>	<b>2,026</b>	<b>31,278</b>
<b>Net Surplus/(Deficit) before Tax</b>		-	<b>(706,316)</b>	-	<b>(617,293)</b>	<b>(2,623,908)</b>	<b>794,101</b>	<b>(4,027,691)</b>
Tax Expense		-	-	-	-	(14,016)	-	(47,583)
<b>Net Surplus/(Deficit) after Tax</b>		-	<b>(706,316)</b>	-	<b>(617,293)</b>	<b>(2,609,892)</b>	<b>794,101</b>	<b>(3,980,108)</b>

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

Fund No. 10 (06-07)		Fund No. 9 (05-06)		Fund No. 8 (04-05)		Fund No. 7 (03-04)		Fund No. 6 (02-03)		Fund No. 1-5 (97-02)		TOTAL	
2010	2009	2010	2009	2010	2009	2010	2009	2010	2009	2010	2009	2010	2009
\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
-	-	-	-	-	-	-	-	-	-	-	-	4,098,500	6,215,923
-	-	-	-	-	-	-	3,500,000	-	500,000	-	-	-	4,000,000
2,553,684	-	1,350,500	-	963,662	-	290,226	-	-	-	-	-	6,679,350	-
-	-	-	-	-	-	-	-	-	-	-	-	7,999	1,462,570
(2,402,696)	10,217,187	1,535,584	2,746,454	1,720,131	3,593,667	4,052,589	1,777,771	155,448	(606,912)	35,747	(24,535)	7,072,098	28,840,904
22,326	-	-	-	24,045	-	29,200	-	18,783	-	5,217	-	1,061,704	554,070
-	-	-	-	-	-	-	-	-	-	-	-	1,466,300	1,311,756
<b>4,934,054</b>	<b>(10,217,187)</b>	<b>(185,084)</b>	<b>(2,746,454)</b>	<b>(780,514)</b>	<b>(3,593,667)</b>	<b>(3,791,563)</b>	<b>1,722,229</b>	<b>(174,231)</b>	<b>1,106,912</b>	<b>(40,964)</b>	<b>24,535</b>	<b>1,185,747</b>	<b>(19,028,237)</b>
20,503	208,804	-	798	3,330	118,342	-	138	-	-	45,423	250,184	169,950	1,022,798
<b>4,954,557</b>	<b>(10,008,383)</b>	<b>(185,084)</b>	<b>(2,745,656)</b>	<b>(777,184)</b>	<b>(3,475,325)</b>	<b>(3,791,563)</b>	<b>1,722,367</b>	<b>(174,231)</b>	<b>1,106,912</b>	<b>4,459</b>	<b>274,719</b>	<b>1,355,697</b>	<b>(18,005,439)</b>
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	1,314,868	1,290,541
-	-	-	-	-	-	-	-	-	-	-	-	262,306	255,626
2,026	2,961	2,026	2,961	2,026	2,961	2,026	2,961	2,026	2,961	2,726	14,805	25,102	46,434
-	1,150	-	-	-	-	-	-	-	-	-	-	20,000	19,550
-	-	-	-	-	-	-	-	-	-	-	-	124,005	85,276
-	-	-	-	-	-	-	-	-	-	-	-	50,854	41,348
-	-	-	-	-	-	-	-	-	-	-	-	43,158	14,972
-	-	-	-	-	-	-	-	-	-	-	-	12,600	12,600
-	-	-	-	-	-	-	-	-	-	-	-	530	26,295
-	-	-	-	-	-	-	-	-	-	-	-	11,144	9,171
-	-	-	-	-	-	-	-	-	-	-	-	2,540	473
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>2,026</b>	<b>4,111</b>	<b>2,026</b>	<b>2,961</b>	<b>2,026</b>	<b>2,961</b>	<b>2,026</b>	<b>2,961</b>	<b>2,026</b>	<b>2,961</b>	<b>2,726</b>	<b>14,805</b>	<b>1,867,107</b>	<b>1,802,286</b>
4,952,531	(10,012,494)	(187,110)	(2,748,617)	(779,210)	(3,478,286)	(3,793,589)	1,719,406	(176,257)	1,103,951	1,733	259,914	(511,410)	(19,807,725)
-	(153,184)	-	(9,225)	-	40,300	-	47,318	-	114,218	-	22,172	-	-
<b>4,952,531</b>	<b>(9,859,310)</b>	<b>(187,110)</b>	<b>(2,739,392)</b>	<b>(779,210)</b>	<b>(3,518,586)</b>	<b>(3,793,589)</b>	<b>1,672,088</b>	<b>(176,257)</b>	<b>989,733</b>	<b>1,733</b>	<b>237,742</b>	<b>(511,410)</b>	<b>(19,807,725)</b>

## NEW ZEALAND MUTUAL LIABILITY RISKPOOL

Statement of Movements in Trust Funds for the year ended 30 June 2010

	Note	Fund No. 14 (10-11)	Fund No. 13 (09-10)		Fund No. 12 (08-09)		Fund No. 11 (07-08)	
		2010	2010	2009	2010	2009	2010	2009
		\$	\$	\$	\$	\$	\$	\$
<b>Total Trust Funds at 1 July 2009</b>		-	-	-	(2,609,892)	-	(2,907,095)	1,073,013
Net Surplus/(Deficit)		-	(706,316)	-	(617,293)	(2,609,892)	794,101	(3,980,108)
Capital Contribution		-	-	-	-	-	-	-
<b>Total Trust Funds at 30 June 2010</b>	7	-	(706,316)	-	(3,227,185)	(2,609,892)	(2,112,994)	(2,907,095)

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

Fund No. 10 (06-07)		Fund No. 9 (05-06)		Fund No. 8 (04-05)		Fund No. 7 (03-04)		Fund No. 6 (02-03)		Fund No. 1-5 (97-02)		TOTAL	
2010	2009	2010	2009	2010	2009	2010	2009	2010	2009	2010	2009	2010	2009
\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
(9,361,346)	497,964	(5,934,015)	(3,194,623)	(4,430,339)	(911,753)	(1,373,259)	(3,045,347)	565,081	(424,652)	4,932,302	4,694,560	(21,118,563)	(1,310,838)
4,952,531	(9,859,310)	(187,110)	(2,739,392)	(779,210)	(3,518,586)	(3,793,589)	1,672,088	(176,257)	989,733	1,733	237,742	(511,410)	(19,807,725)
-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>(4,408,815)</b>	<b>(9,361,346)</b>	<b>(6,121,125)</b>	<b>(5,934,015)</b>	<b>(5,209,549)</b>	<b>(4,430,339)</b>	<b>(5,166,848)</b>	<b>(1,373,259)</b>	<b>388,824</b>	<b>565,081</b>	<b>4,934,035</b>	<b>4,932,302</b>	<b>(21,629,973)</b>	<b>(21,118,563)</b>

# NEW ZEALAND MUTUAL LIABILITY RISKPOOL

Statement of Financial Position as at 30 June 2010

	Note	Fund No. 14 (10-11)	Fund No. 13 (09-10)		Fund No. 12 (08-09)		Fund No. 11 (07-08)	
		2010	2010	2009	2010	2009	2010	2009
		\$	\$	\$	\$	\$	\$	\$
<b>Trust Funds</b>								
Trust Accounts		-	(706,316)	-	(3,227,185)	(2,609,892)	(2,112,994)	(2,907,095)
Trust Capital Account		-	-	-	-	-	-	-
<b>Total</b>	7	-	(706,316)	-	(3,227,185)	(2,609,892)	(2,112,994)	(2,907,095)
Represented by:								
<b>Current Assets</b>								
Bank – ANZ Banking Group		232,172	472,405	(27,602)	1,954,987	1,082,815	1,241,109	413,565
Short Term Bank Deposits		-	240,000	-	370,000	1,860,000	250,000	2,770,000
Accrued Interest		-	18	-	28	32,533	19	313,553
Accounts Receivable		-	-	-	-	-	-	-
Prepayments		38,953	-	24,535	-	-	-	-
Reinsurance Recoverable	8	-	380,957	-	908,722	471,089	-	-
Provision for Doubtful Debts		-	-	-	-	-	-	-
Taxation Receivable/(Payable)		-	1,785	-	18,413	7,793	113,405	42,620
GST Receivable/(Payable)		(30,125)	70,313	3,067	243,413	211,897	142,220	125,260
<b>Total Current Assets</b>		241,000	1,165,478	-	3,495,563	3,666,127	1,746,753	3,664,998
<b>Total Assets</b>		241,000	1,165,478	-	3,495,563	3,666,127	1,746,753	3,664,998
<b>Current Liabilities</b>								
Accounts Payable		-	51,485	-	15,369	70,805	4,497	65,969
Interfund Payable/(Receivable)		-	(7,999)	-	(1,476,586)	(1,476,586)	406,304	406,304
Provision for Rebate		-	-	-	-	-	-	-
Contributions Received in Advance		241,000	-	-	-	-	-	-
<b>Total Current Liabilities</b>		241,000	43,486	-	(1,461,217)	(1,405,781)	410,801	472,273
<b>Claims Provision</b>	8	-	1,828,308	-	8,183,965	7,681,800	3,448,946	6,099,820
<b>Total Liabilities</b>		241,000	1,871,794	-	6,722,748	6,276,019	3,859,747	6,572,093
<b>EXCESS/(DEFICIT) ASSETS OVER LIABILITIES</b>		-	(706,316)	-	(3,227,185)	(2,609,892)	(2,112,994)	(2,907,095)

Signed on behalf of the Trustee, Local Government  
Mutual Funds Trustee Limited on 2 November 2010

**B Taylor**  
DIRECTOR



**R McLeod**  
DIRECTOR



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

Fund No. 10 (06-07)		Fund No. 9 (05-06)		Fund No. 8 (04-05)		Fund No. 7 (03-04)		Fund No. 6 (02-03)		Fund No. 1-5 (97-02)		TOTAL	
2010	2009	2010	2009	2010	2009	2010	2009	2010	2009	2010	2009	2010	2009
\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
(4,408,815)	(9,361,346)	(6,121,125)	(5,934,015)	(5,209,549)	(4,430,339)	(5,313,039)	(1,519,450)	257,659	433,916	4,557,621	4,555,888	(22,283,743)	(21,772,333)
-	-	-	-	-	-	146,191	146,191	131,165	131,165	376,414	376,414	653,770	653,770
(4,408,815)	(9,361,346)	(6,121,125)	(5,934,015)	(5,209,549)	(4,430,339)	(5,166,848)	(1,373,259)	388,824	565,081	4,934,035	4,932,302	(21,629,973)	(21,118,563)
2,325,007	630,158	(5,776,219)	(2,338,079)	(2,064,058)	1,097,207	(286,883)	(2,570,304)	(1,807,129)	382,820	5,211,458	2,807,846	1,502,849	1,478,426
540,000	745,000	-	-	-	735,000	-	-	-	-	600,000	2,680,000	2,000,000	8,790,000
41	59,115	-	-	-	1,013	-	-	-	-	45	119,757	151	525,971
-	-	-	-	-	-	89,925	3,500,000	13,625	500,000	-	-	103,550	4,000,000
-	-	-	-	-	-	-	-	-	-	-	-	38,953	24,535
-	-	11,348,884	20,541,045	9,822,406	13,568,500	2,750,558	12,074,958	14,884,931	20,483,540	1,455,038	3,445,417	41,551,496	70,584,549
-	-	-	-	-	-	-	-	-	-	-	-	-	-
2,922	44,211	-	-	79	20,788	-	-	-	-	17,750	31,725	154,354	147,137
3,107	2,759	606,210	271,193	312,416	63,226	(227,033)	(276,849)	181,005	(115,999)	(64,612)	(57,784)	1,236,914	226,770
2,871,077	1,481,243	6,178,875	18,474,159	8,070,843	15,485,734	2,326,567	12,727,805	13,272,432	21,250,361	7,219,679	9,026,961	46,588,267	85,777,388
2,871,077	1,481,243	6,178,875	18,474,159	8,070,843	15,485,734	2,326,567	12,727,805	13,272,432	21,250,361	7,219,679	9,026,961	46,588,267	85,777,388
52,426	57,201	9,982	14,718	10,214	8,167	8,316	11,453	6,746	46,098	2,083	40,993	161,118	315,404
825,579	825,579	(553,324)	(560,593)	384,717	384,717	(314,397)	(314,397)	248,272	248,272	487,434	486,704	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	139,370	-	142,167	-	34,994	-	-	-	-	-	557,531	-
878,005	882,780	(403,972)	(545,875)	537,098	392,884	(271,087)	(302,944)	255,018	294,370	489,517	527,697	718,649	315,404
6,401,887	9,959,809	12,703,972	24,954,049	12,743,294	19,523,189	7,764,502	14,404,008	12,628,590	20,390,910	1,796,127	3,566,962	67,499,591	106,580,547
7,279,892	10,842,589	12,300,000	24,408,174	13,280,392	19,916,073	7,493,415	14,101,064	12,883,608	20,685,280	2,285,644	4,094,659	68,218,240	106,895,951
(4,408,815)	(9,361,346)	(6,121,125)	(5,934,015)	(5,209,549)	(4,430,339)	(5,166,848)	(1,373,259)	388,824	565,081	4,934,035	4,932,302	(21,629,973)	(21,118,563)

# NEW ZEALAND MUTUAL LIABILITY RISKPOOL

Statement of Cash Flows for the year ended 30 June 2010

	Note	Fund No. 14 (10–11)	Fund No. 13 (09–10)		Fund No. 12 (08–09)		Fund No. 11 (07–08)	
		2010	2010	2009	2010	2009	2010	2009
		\$	\$	\$	\$	\$	\$	\$
<b>Cash flows from operating activities</b>								
<b>Cash was provided from:</b>								
Members' Contributions		241,000	4,098,500	-	-	6,215,923	-	-
Calls Received	7	-	-	-	824,705	-	696,573	-
Interest Received – Bank		-	28,432	-	69,767	175,829	348,516	174,958
Reinsurance recoveries received		-	-	-	-	-	-	-
		<b>241,000</b>	<b>4,126,932</b>	<b>-</b>	<b>894,472</b>	<b>6,391,752</b>	<b>1,045,089</b>	<b>174,958</b>
<b>Cash was applied to:</b>								
Reinsurance		-	(1,466,300)	-	-	(1,311,756)	-	-
Scheme Manager's Fee		-	(1,294,720)	-	(20,148)	(1,294,720)	-	(7,288)
Fund Manager's Fee		-	(262,306)	-	-	(255,626)	-	-
Legal Fees		-	(530)	-	(7,500)	(18,795)	-	(7,500)
Claims		-	(111,665)	-	(1,359,719)	(240,226)	(2,641,449)	(918,342)
Consultants		(38,953)	(76,721)	(24,535)	(41,849)	(59,674)	-	(42,583)
Audit Fees		-	-	-	(8,368)	-	(1,521)	(13,700)
Other Expenses		-	(109,409)	-	(26,563)	(56,175)	-	(13,368)
Taxation paid		-	(1,785)	-	(12,690)	(5,723)	(70,785)	(29,780)
Net GST		30,125	(63,489)	(3,067)	(35,463)	(206,242)	(23,790)	40,750
		<b>(8,828)</b>	<b>(3,386,925)</b>	<b>(27,602)</b>	<b>(1,512,300)</b>	<b>(3,448,937)</b>	<b>(2,737,545)</b>	<b>(991,811)</b>
<b>Net Cash inflow/(outflow) from operating activities</b>	6	<b>232,172</b>	<b>740,007</b>	<b>(27,602)</b>	<b>(617,828)</b>	<b>2,942,815</b>	<b>(1,692,456)</b>	<b>(816,853)</b>
<b>Cash flows from investing activities:</b>								
Net (increase)/decrease in investments		-	-	-	-	-	-	-
<b>Net cash inflow/(outflow) from investing activities</b>		-	-	-	-	-	-	-
<b>Cash flows from financing activities:</b>								
Advances (to)/from other Funds		-	-	-	-	-	-	-
<b>Net cash inflow/(outflow) from investing activities</b>		-	-	-	-	-	-	-
<b>Net increase/(decrease) in cash held</b>		<b>232,172</b>	<b>740,007</b>	<b>(27,602)</b>	<b>(617,828)</b>	<b>2,942,815</b>	<b>(1,692,456)</b>	<b>(816,853)</b>
Opening cash		-	(27,602)	-	2,942,815	-	3,183,565	4,000,418
Merger of Funds	5	-	-	-	-	-	-	-
<b>Ending cash</b>		<b>232,172</b>	<b>712,405</b>	<b>(27,602)</b>	<b>2,324,987</b>	<b>2,942,815</b>	<b>1,491,109</b>	<b>3,183,565</b>

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

Fund No. 10 (06-07)		Fund No. 9 (05-06)		Fund No. 8 (04-05)		Fund No. 7 (03-04)		Fund No. 6 (02-03)		Fund No. 1-5 (97-02)		TOTAL	
2010	2009	2010	2009	2010	2009	2010	2009	2010	2009	2010	2009	2010	2009
\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
-	-	-	-	-	-	-	-	-	-	-	-	4,339,500	6,215,923
2,553,684	-	1,489,870	-	1,105,829	-	3,735,295	-	486,375	-	-	-	10,892,331	-
79,577	262,215	-	798	4,343	161,017	-	138	-	-	165,135	289,822	695,770	1,064,777
-	-	2,026,048	1,007,675	387,138	47,589	1,097,836	654,144	1,690,847	1,577,654	464,242	642,895	5,666,111	3,929,957
<b>2,633,261</b>	<b>262,215</b>	<b>3,515,918</b>	<b>1,008,473</b>	<b>1,497,310</b>	<b>208,606</b>	<b>4,833,131</b>	<b>654,282</b>	<b>2,177,222</b>	<b>1,577,654</b>	<b>629,377</b>	<b>932,717</b>	<b>21,593,712</b>	<b>11,210,657</b>
-	-	-	-	-	-	-	-	-	-	-	-	(1,466,300)	(1,311,756)
-	-	-	-	-	-	-	-	-	-	-	-	(1,314,868)	(1,302,008)
-	-	-	-	-	-	-	-	-	-	-	-	(262,306)	(255,626)
-	-	-	-	-	-	-	-	-	-	-	-	(8,030)	(26,295)
(1,182,302)	(3,155,039)	(6,616,994)	(3,247,699)	(5,163,800)	(1,263,338)	(2,498,024)	(1,841,943)	(4,064,273)	(984,607)	(314,637)	(588,876)	(23,952,863)	(12,240,070)
-	(1,150)	-	-	-	-	-	-	-	-	-	-	(157,523)	(127,942)
(1,521)	(2,740)	(1,521)	(2,740)	(1,521)	(2,740)	(1,521)	(2,740)	(1,521)	(2,740)	(7,609)	(13,700)	(25,103)	(41,100)
-	-	-	-	-	-	-	-	-	-	-	-	(135,972)	(69,543)
41,289	(4,203)	-	55,383	20,709	55,020	-	9,580	-	-	13,975	49,041	(9,287)	129,318
(878)	62,677	(335,543)	32,472	(248,963)	(29,834)	(50,165)	208,848	(301,377)	66,171	2,506	38,061	(1,027,037)	209,836
<b>(1,143,412)</b>	<b>(3,100,455)</b>	<b>(6,954,058)</b>	<b>(3,162,584)</b>	<b>(5,393,575)</b>	<b>(1,240,892)</b>	<b>(2,549,710)</b>	<b>(1,626,255)</b>	<b>(4,367,171)</b>	<b>(921,176)</b>	<b>(305,765)</b>	<b>(515,474)</b>	<b>(28,359,289)</b>	<b>(15,035,186)</b>
<b>1,489,849</b>	<b>(2,838,240)</b>	<b>(3,438,140)</b>	<b>(2,154,111)</b>	<b>(3,896,265)</b>	<b>(1,032,286)</b>	<b>2,283,421</b>	<b>(971,973)</b>	<b>(2,189,949)</b>	<b>656,478</b>	<b>323,612</b>	<b>417,243</b>	<b>(6,765,577)</b>	<b>(3,824,529)</b>
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-
1,489,849	(2,838,240)	(3,438,140)	(2,154,111)	(3,896,265)	(1,032,286)	2,283,421	(971,973)	(2,189,949)	656,478	323,612	417,243	(6,765,577)	(3,824,529)
1,375,158	4,213,398	(2,338,079)	(183,968)	1,832,207	2,864,493	(2,570,304)	(1,598,331)	382,820	(273,658)	5,487,846	5,070,603	10,268,426	14,092,955
-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>2,865,007</b>	<b>1,375,158</b>	<b>(5,776,219)</b>	<b>(2,338,079)</b>	<b>(2,064,058)</b>	<b>1,832,207</b>	<b>(286,883)</b>	<b>(2,570,304)</b>	<b>(1,807,129)</b>	<b>382,820</b>	<b>5,811,458</b>	<b>5,487,846</b>	<b>3,502,849</b>	<b>10,268,426</b>

# NEW ZEALAND MUTUAL LIABILITY RISKPOOL

Notes to the Financial Statements for the year ended 30 June 2010

## 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 the following 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 except for receivables and payables which are stated inclusive of GST.

### *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.

### *Reinsurance Recoverable*

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.

### **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.

The Scheme has not recognised a deferred tax asset in respect of either tax losses of \$25.3m (2009: 26.7m) or timing differences of \$0.4m (2009: (1.5m)) as at 30 June 2010.

### **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.

### **Note 5. Merger of funds**

Prior to the 30 June 2009 balance date the Board decided that as all Fund 1 claims had been settled resulting in a small surplus and that Funds 2 – 4 had excess assets over liabilities and it was extremely unlikely to have claims settlements which would result in those excesses turning into deficits it was appropriate that in exchange for the surplus within each of Funds 1 to 4 that Fund 5 (2001-02) accept any losses not recoverable by reinsurance on the operations of Funds 1 to 4 and that the surplus remaining in Funds 1 to 4 be applied by way of transfer to Fund 5 on or before 30 June 2009.

## NEW ZEALAND MUTUAL LIABILITY RISKPOOL

Notes to the Financial Statements for the year ended 30 June 2010 (continued)

### Note 6. Reconciliation Of Net Surplus/(Deficit) To Net Cash Inflow/(Outflow) From Operating Activities

	Fund No. 14 (10-11)		Fund No. 13 (09-10)		Fund No. 12 (08-09)		Fund No. 11 (07-08)		Fund No. 10 (06-07)		Fund No. 9 (05-06)	
	2010		2010		2010		2010		2010		2010	
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
<b>Net Surplus/(Deficit)</b>	-	(706,316)	-	(617,293)	(2,609,892)	794,101	(3,980,108)	4,952,531	(9,859,310)	(187,110)	(2,739,392)	
<b>Add/(less) non cash items</b>												
Claims Provision	-	1,447,351	-	64,532	7,210,711	(2,650,874)	2,735,235	(3,557,922)	6,823,789	(3,057,916)	279,149	
<b>Add/(less) movements in other working capital items</b>	-	1,447,351	-	64,532	7,210,711	(2,650,874)	2,735,235	(3,557,922)	6,823,789	(3,057,916)	279,149	
Accrued Interest	-	(18)	-	32,505	(32,533)	313,534	(61,212)	59,074	53,411	-	-	
GST Receivable	30,125	(67,246)	(3,067)	(31,516)	(211,897)	(16,960)	40,283	(348)	65,503	(335,017)	32,304	
Taxation Receivable	-	(1,785)	-	(10,620)	(7,793)	(70,785)	(26,915)	41,289	(4,203)	-	55,383	
Interfund Payable/Receivable	-	(7,999)	-	-	(1,476,586)	-	478,852	-	108,001	7,269	216,935	
Trust Income Distribution	-	-	-	-	-	-	-	-	-	-	-	
Prepayments	(38,953)	24,535	(24,535)	-	-	-	-	-	-	-	-	
Deferred Tax	-	-	-	-	-	-	-	-	-	-	-	
Contribution received in advance	241,000	-	-	-	-	-	-	-	-	139,370	-	
Accounts Receivable	-	-	-	-	-	-	2,000	-	-	-	-	
Accounts Payable	-	51,485	-	(55,436)	70,805	(61,472)	(4,988)	(4,775)	(25,431)	(4,736)	1,510	
	<b>232,172</b>	<b>(1,028)</b>	<b>(27,602)</b>	<b>(65,067)</b>	<b>(1,658,004)</b>	<b>164,317</b>	<b>428,020</b>	<b>95,240</b>	<b>197,281</b>	<b>(193,114)</b>	<b>306,132</b>	
<b>Net Cash inflow/(outflow) from operating activities</b>	<b>232,172</b>	<b>740,007</b>	<b>(27,602)</b>	<b>(617,828)</b>	<b>2,942,815</b>	<b>(1,692,456)</b>	<b>(816,853)</b>	<b>1,489,849</b>	<b>(2,838,240)</b>	<b>(3,438,140)</b>	<b>(2,154,111)</b>	

Fund No. 8 (04-05)		Fund No. 7 (03-04)		Fund No. 6 (02-03)		Fund No. 1-5 (97-02)		TOTAL	
2010	2009	2010	2009	2010	2009	2010	2009	2010	2009
\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
(779,210)	(3,518,586)	(3,793,589)	1,672,088	(176,257)	989,733	1,733	237,742	(511,410)	(19,807,725)
(3,033,801)	2,194,809	2,684,894	424,214	(2,163,711)	(113,405)	219,544	(4,946)	(10,047,903)	19,549,556
<b>(3,033,801)</b>	<b>2,194,809</b>	<b>2,684,894</b>	<b>424,214</b>	<b>(2,163,711)</b>	<b>(113,405)</b>	<b>219,544</b>	<b>(4,946)</b>	<b>(10,047,903)</b>	<b>19,549,556</b>
1,013	42,675	-	-	-	-	119,712	39,637	525,820	41,978
(249,190)	(29,374)	(49,816)	209,395	(297,004)	64,536	6,828	34,214	(1,010,144)	201,897
20,709	55,020	-	9,580	-	-	13,975	49,041	(7,217)	130,113
-	227,310	-	217,683	-	200,908	730	26,897	-	-
-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	(14,418)	(24,535)
-	-	-	-	-	-	-	-	-	-
142,167	-	34,994	-	-	-	-	-	557,531	-
-	-	3,410,075	(3,500,000)	486,375	(500,000)	-	-	3,896,450	(3,998,000)
2,047	(4,140)	(3,137)	(4,933)	(39,352)	14,706	(38,910)	34,658	(154,286)	82,187
<b>(83,254)</b>	<b>291,491</b>	<b>3,392,116</b>	<b>(3,068,275)</b>	<b>150,019</b>	<b>(219,850)</b>	<b>102,335</b>	<b>184,447</b>	<b>3,793,736</b>	<b>(3,566,360)</b>
<b>(3,896,265)</b>	<b>(1,032,286)</b>	<b>2,283,421</b>	<b>(971,973)</b>	<b>(2,189,949)</b>	<b>656,478</b>	<b>323,612</b>	<b>417,243</b>	<b>(6,765,577)</b>	<b>(3,824,529)</b>

## Note 7. CALLS – Funding the Deficit

The Board of the Trustee resolved in June 2009 that based on the claims outturn deficit estimates it was prudent to make a call for Funds 6 and 7 totalling \$4,000,000 and also to advise members that further calls would be necessary. Subsequently, following actuarial advice, the Board determined and advised members of the expected further calls needed to cover the overall deficit of \$27 million in Fund years 7 to 12. The terms of those calls were: \$9m on 1 July 2010, \$9m on 1 July 2011 and the balance on 1 July 2012. Five of the larger members (in terms of claims made) were requested and have paid their share of the three calls in advance on the condition they will receive a refund if less than \$9 million is required for the call in 2012.

# NEW ZEALAND MUTUAL LIABILITY RISKPOOL

Notes to the Financial Statements for the year ended 30 June 2010 (continued)

## Note 8. Claims

	Fund No. 14 (10-11)		Fund No. 13 (09-10)		Fund No. 12 (08-09)		Fund No. 11 (07-08)		Fund No. 10 (06-07)		Fund No. 9 (05-06)	
	2010	2010	2009	2010	2009	2010	2009	2010	2009	2010	2009	
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
<b>Cumulative Claims Experience</b>												
Claims Provision	-	1,828,308	-	8,183,965	7,681,800	3,448,946	6,099,820	6,401,887	9,959,809	12,703,972	24,954,049	
Claims paid – Current year	-	126,411	-	1,363,706	248,048	2,586,302	970,913	1,177,552	3,132,213	6,612,279	3,248,820	
Claims paid – Prior year(s)	-	-	-	248,048	-	1,087,447	116,534	4,585,714	1,453,501	8,452,496	5,203,676	
Claims paid – Prior year(s) adjustments	-	-	-	-	-	-	-	-	-	-	-	
Gross claims incurred (Paid and estimated)	-	1,954,719	-	9,795,719	7,929,848	7,122,695	7,187,267	12,165,153	14,545,523	27,768,747	33,406,545	
Less reinsurance received	-	-	-	-	-	-	-	-	-	(3,033,723)	(1,007,675)	
Less reinsurance recoverable	-	(380,957)	-	(908,722)	(471,089)	-	-	-	-	(11,348,884)	(20,541,045)	
<b>Total Net Claims</b>	-	<b>1,573,762</b>	-	<b>8,886,997</b>	<b>7,458,759</b>	<b>7,122,695</b>	<b>7,187,267</b>	<b>12,165,153</b>	<b>14,545,523</b>	<b>13,386,140</b>	<b>11,857,825</b>	
<b>Claims Reconciliation</b>												
Claims Provision 1 July	-	-	-	7,681,800	-	6,099,820	3,364,585	9,959,809	3,136,020	24,954,049	7,455,662	
Claims Paid	-	(126,411)	-	(1,363,706)	(248,048)	(2,586,302)	(970,913)	(1,177,552)	(3,132,213)	(6,612,279)	(3,248,820)	
Reassessment of prior years claims	-	-	-	1,428,238	-	(64,572)	3,706,148	(2,380,370)	9,956,002	1,528,315	2,520,294	
Reinsurance recoveries received	-	-	-	-	-	-	-	-	-	2,026,048	1,007,675	
Current year's claims received	-	1,954,719	-	-	7,929,848	-	-	-	-	-	-	
Movement in reinsurance recoveries	-	-	-	437,633	-	-	-	-	-	(9,192,161)	17,219,238	
<b>Claims Provision at 30 June</b>	-	<b>1,828,308</b>	-	<b>8,183,965</b>	<b>7,681,800</b>	<b>3,448,946</b>	<b>6,099,820</b>	<b>6,401,887</b>	<b>9,959,809</b>	<b>12,703,972</b>	<b>24,954,049</b>	
	<p>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 &amp; 5 \$3,000,000, Fund 6 \$3,250,000, Fund 7 \$3,500,000, Funds 8 &amp; 9 \$4,000,000, Fund 10 \$6,000,000, Fund 11 \$1,500,000, Fund 12 \$1,625,000 and Fund 13 \$1,000,000. However Funds 7-9 do not have reinsurance cover for WHRS "leaky homes" claims and Funds 10 and thereafter do not have reinsurance cover for any "leaky homes" claims.</p> <p>The Future Claims Administration Expense reflects the level of claims being handled. The table below shows the respective reserves for future claims administration expenses included in the claims provision.</p>											
Future Claims Administration Reserve	-	621,066	-	886,604	554,070	190,303	181,770	112,116	89,790	73,761	81,030	

Fund No. 8 (04-05)		Fund No. 7 (03-04)		Fund No. 6 (02-03)		Fund No. 1-5 (97-02)		TOTAL	
2010	2009	2010	2009	2010	2009	2010	2009	2010	2009
\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
12,743,294	19,523,189	7,764,502	14,404,008	12,628,590	20,390,910	1,796,127	3,566,962	67,499,591	106,580,547
5,165,115	1,259,437	2,494,731	1,837,336	4,028,789	997,457	284,932	618,581	23,839,817	12,312,805
4,046,962	2,787,525	8,568,325	6,730,989	7,684,731	6,687,274	12,241,671	11,623,090	46,915,394	34,602,589
-	-	-	-	-	-	-	-	-	-
21,955,371	23,570,151	18,827,558	22,972,333	24,342,110	28,075,641	14,322,730	15,808,633	138,254,802	153,495,941
(434,727)	(47,589)	(1,751,980)	(654,144)	(5,991,161)	(4,300,314)	(2,083,655)	(1,619,413)	(13,295,246)	(7,629,135)
(9,822,406)	(13,568,500)	(2,750,558)	(12,074,958)	(14,884,931)	(20,483,540)	(1,455,038)	(3,445,417)	(41,551,496)	(70,584,549)
<b>11,698,238</b>	<b>9,954,062</b>	<b>14,325,020</b>	<b>10,243,231</b>	<b>3,466,018</b>	<b>3,291,787</b>	<b>10,784,037</b>	<b>10,743,803</b>	<b>83,408,060</b>	<b>75,282,257</b>
19,523,189	6,049,275	14,404,008	3,752,317	20,390,910	4,230,039	3,566,962	1,564,093	106,580,547	29,551,991
(5,165,115)	(1,259,437)	(2,494,731)	(1,837,336)	(4,028,789)	(997,457)	(284,932)	(618,581)	(23,839,817)	(12,312,805)
1,744,176	3,406,657	4,081,789	1,607,406	174,231	(693,602)	40,234	(29,260)	6,552,041	20,473,645
387,138	47,589	1,097,836	654,144	1,690,847	1,577,654	464,242	642,895	5,666,111	3,929,957
-	-	-	-	-	-	-	-	1,954,719	7,929,848
(3,746,094)	11,279,105	(9,324,400)	10,227,477	(5,598,609)	16,274,276	(1,990,379)	2,007,815	(29,414,010)	57,007,911
<b>12,743,294</b>	<b>19,523,189</b>	<b>7,764,502</b>	<b>14,404,008</b>	<b>12,628,590</b>	<b>20,390,910</b>	<b>1,796,127</b>	<b>3,566,962</b>	<b>67,499,591</b>	<b>106,580,547</b>
66,385	42,340	70,810	41,610	51,633	32,850	10,327	5,840	2,083,005	1,029,300

### Claims

The outstanding claims liability is measured as the central estimate of expected future payments relating to claims incurred at the reporting date. The expected future payments include those in relation to claims incurred but not enough reported ("IBNER"). These claims are discounted in the financial statements at 3.5%pa over 2 years, which is the average expected term to settlement.

Claims expense represents claim payments adjusted for movement in the outstanding claims liability. The estimation of the outstanding claims liability involves a number of key assumptions and is the most critical accounting estimate. The Directors take all reasonable steps to ensure that the Directors have appropriate information regarding claims exposures. External actuarial advice is sought and the use of other experts is used to assess open claims. However, given the uncertainty in establishing the liability, it is likely that the final outcome will be different from the original liability established. Changes in claims estimates impact profit and loss in the year in which the estimates are changed.

# NEW ZEALAND MUTUAL LIABILITY RISKPOOL

Notes to the Financial Statements for the year ended 30 June 2010 *(continued)*

## *Central Estimate of Outstanding Claims Liability*

As at 30 June 2010 the central estimate of the outstanding claims liability was evaluated by Neil Christie (Fellow of the NZ Society of Actuaries) of Melville Jessup Weaver. The actuaries are independent of the entity and of the external auditor. The actuaries are satisfied as to the nature and accuracy of data in the outstanding claims liability.

The estimation of the outstanding claims liability is based on an actuarial method that takes into account experience, trends, and other relevant data. The estimation of the outstanding claims liability is subject to a level of uncertainty. For 'leaky building' claims, the estimation is subject to a greater degree of uncertainty due to the nature of the claims, which are variable in size and settle over a longer term. The outstanding claims liability is considered the Fund Manager's best estimate as at the date of the signed accounts, but should be viewed in respect of the uncertainties.

## **Note 9. Subsequent Events**

Subsequent to balance date, on 4 September 2010, a significant earthquake centred near Darfield, Canterbury, caused severe damage across the region. There is unlikely to be a material financial effect on the financial statements.

The Government has announced their intention to introduce a Weathertight Homes Financial Assistance Package in which the Government and Local Authorities each fund 25% of the cost of fixing leaky home claims and this has been welcomed by many of Riskpool's members. Until the full extent of the government assistance package is released the Directors are not in a position to determine what impact this will have on the financial position for each fund year.

# SCHEME RULES

## 1. DEFINITIONS

In these Rules:

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

**'Coverage'** is defined in Rule 8;

**'Claim'** means any claim made under the Protection Wording;

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

**'Fund'** means each separate annual fund established pursuant to clause 4 of the Deed of Trust; **'Fund Year'** has a corresponding meaning; the first Fund Year is from 4.00 pm on 30 June 1997 to 4.00 pm on 30 June 1998; 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;

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

**'Member'** means any person or body (whether incorporated or not) admitted as a member of the Scheme pursuant to clause 11.1 of the Deed of Trust and these Rules; **'Membership'** has a corresponding meaning;

**'Protection Wording'** means, in relation to any particular Member and Fund Year, the combined liability protection wording issued to that Member by the Scheme setting out the risks covered by the Scheme and the terms, conditions and limits in respect of those risks: this term equates to the term **'Guidelines'** in clause 8.1 of the Deed of Trust;

**'Scheme'** means the scheme more formally known as the New Zealand Mutual Liability Riskpool;

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

## 2. PURPOSE AND STATUS OF RULES

**2.1** The purpose of these Rules is to set out the administrative mechanisms by which the Scheme is administered so as to put the purpose and intent of the Deed of Trust into effect.

**2.2** In the case of conflict between the provisions of the three principal constituent documents of the Scheme, which are the Deed of Trust, these Rules and the Protection Wording, the Deed of Trust shall prevail over the Scheme's Rules which shall prevail over the Protection Wording.

## 3. OFFER OF MEMBERSHIP AND NOTICES

**3.1** An offer of Membership may be made to any organisation or person approved for admission by the Board.

**3.2** Membership of the Scheme is by Fund, so one Member may hold one or more Memberships.

**3.3** Not later than 50 days prior to the end of a Fund Year, the Board shall provide written notice to each Member of that Fund advising whether that Member will be offered Membership for the next Fund Year and if so, the initial contribution payable by that Member in respect of that Fund Year.

**3.4** An offer to become a Member of a Fund must include:

- (a) A copy of the Protection Wording unless this has already been provided;
- (b) A copy of the Deed of Trust unless this has already been provided;
- (c) An up-to-date copy of these Rules unless this has already been provided; and
- (d) Advice as to the initial contribution payable for that Fund as determined by the Board.

**3.5** Members offered Membership in the notice referred to in Rule 3.3 who do not accept that Membership shall give the

Scheme Manager written notice of this decision prior to the later of:

- (a) 20 days after receiving the notice; and
- (b) 30 days prior to the start of the new Fund Year.

**3.6** If a Member fails to give the notice described in Rule 3.5 within the required time frame, then the Member must reimburse the Scheme within 20 days for its share of reinsurance and other expenses that have or will be incurred by the Scheme because of the Scheme's expectation of that Member's participation. The amount to be reimbursed will be 25% of the initial contribution that the Member would have paid for Membership of the next Fund Year, being a reasonable pre-estimate of the reimbursement required.

## 4. ACCEPTANCE OF MEMBERSHIP OFFER

A body becomes a Member of a Fund by:

- (a) Notifying the Scheme Manager in writing that it has accepted the offer of Membership; and
- (b) Paying the initial contribution for that Fund Year as determined by the Board within 20 days of the start of the Fund Year (or for such longer period as determined by the Board) failing which, unless otherwise determined by the Board, the offer of Membership lapses.

## 5. MEMBERSHIP OBLIGATIONS

**5.1** By its acceptance of an offer of Membership a Member agrees that:

- (a) The Deed of Trust and these Rules as amended from time to time constitute a contract between the Scheme and the Member subject to Rule 5.3;
- (b) The Member will be bound by the Deed of Trust and these Rules as amended from time to time and

perform the obligations of a Member under the same accordingly;

- (c) The Member will make available to the Scheme Manager or Fund Manager all information and data which the Scheme Manager or Fund Manager reasonably requires in order to determine the claims and risk management experience of the Member for the purpose of assessing contributions;
  - (d) The Scheme Manager shall be permitted (but not obligated) to carry out a risk management audit or otherwise inspect the Member's property and operations at any time; and
  - (e) The Scheme Manager may examine and audit the 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).
- 5.2** For the avoidance of doubt, the contract the subject of Rule 5.1 (a) is a contract between a Member and the Scheme only and the contract does not create, as between a Member and any other Member or Members, any joint rights or obligations or any mutual rights or obligations.
- 5.3** To the extent, if any, to which a provision of these Rules or the Deed of Trust provides or implies:
- (a) Anything in any way contrary to Rule 5.2; or
  - (b) That the Scheme is constituted a joint or mutual agent for its Members or any of them –
- that provision is, to that extent, inoperative and does not form part of the legal relationship between a Member and the Scheme.
- 6. END OF MEMBERSHIP**
- 6.1** Membership ends when and only when the Fund is closed.

- 6.2** The Board shall determine when a Fund and its accounts will be closed and final results for the Fund determined and declared.
- 6.3** Except in the event of the Scheme being wound up, no Member has any entitlement to be paid any amount on account of surplus for a Fund unless:
- (a) The accounts for the Fund have been closed and final results determined and declared; and
  - (b) The Board has determined that a distribution or return should be paid to Members in respect of that Fund.
- 6.4** In the event that a Member is entitled to a distribution of a Fund's surplus, any amount due will be set-off against:
- (a) Any contribution or other monies due but unpaid by the Member to the Scheme; and
  - (b) Any unrecovered loss or expense incurred by the Scheme by, through or in connection with the Member.

## 7. MEMBERS' CONTRIBUTIONS

- 7.1** Members' contributions are determined by the Board.
- 7.2** In the event that a Member fails to comply with the Deed of Trust, these Rules or a direction from the Board and in so doing, in the opinion of the Board, exposes the Scheme to an increased, additional or readily avoidable risk or financial loss (including loss of interest) or additional expense the Board may:
- (a) Require the Member to top up its initial contribution to the relevant Fund to cover that increased, additional or readily avoidable risk; or
  - (b) Require the Member to pay an additional contribution for the relevant Fund to cover that loss or expense; or

- (c) Exclude or limit that increased, additional or readily avoidable risk from the Member's Coverage.

## 8. COVERAGE (PAYMENT OF CLAIMS)

Subject always to the Deed of Trust and these Rules, the Scheme will indemnify each Member for damages or compensation in accordance with the Protection Wording. This is the definition of 'Coverage'. Coverage is only available once any other insurance has been fully utilised.

## 9. RECOURSE TO SCHEME ASSETS ONLY

For the payment of any Claim or the performance of any obligation of the Scheme, recourse may be had solely to the relevant Fund and no claim may be made or endorsed by a Member against:

- (a) Any Trustee of the Scheme;
- (b) Except in the case of negligence or other breach of duty, any employee or agent of the Scheme;
- (c) Any other Fund; or
- (d) Any person described in clauses 13.1.1 to 13.1.4 of the Deed of Trust.

## 10. REIMBURSABLE DEDUCTIBLE OR EXCESS

If the Scheme pays a deductible or excess amount referred to in a Protection Wording the Member shall reimburse the Scheme within 14 days of written notice from the Scheme.

## 11. NOTICE OF CLAIMS

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

- (a) 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, irrespective of its quantum; and

- (b) Of any change materially affecting or varying any of the facts or circumstances existing at the commencement of Membership that shall come to the knowledge of the Member. A Member's knowledge shall be deemed to include the knowledge of any person whose knowledge would at law be that of the Member.

## 12. ADMISSIONS NOT TO BE MADE

The 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.

## 13. INFORMATION TO BE PROVIDED

The Member must provide to 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.

## 14. GRANT OR REFUSAL OF INDEMNITY

**14.1** Subject to clause 8.2 of the Deed of Trust, the Board shall advise the Member as soon as practicable after receipt of a Claim as to whether the Scheme grants or refuses indemnity.

**14.2** Without limiting the discretions of the Board under the Deed of Trust, the Scheme may choose not to indemnify the Member against any Claim or Claim circumstance and may withdraw any indemnity previously granted where the Member has:

- (a) Breached or failed to comply with a condition or obligation in the Protection Wording or under the Deed of Trust or these Rules or committed any other act or made any other omission which entitles the

Board to reduce or cancel a Member's Coverage under Rule 21; and

- (b) The Scheme is prejudiced by that breach, failure, act or omission.

## 15. SUBROGATION

The Member agrees that in the event of payment of any Claim by the Scheme, the Scheme will be subrogated to all the rights of the Member against any person or other legal entity deemed responsible for the Claim, and in such event, the 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.

## 16. SETTLEMENT OF CLAIMS

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

**16.2** On notifying a Claim or Claim circumstance, the 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.

**16.3** The 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 Rule 16.2, but only so far as may reasonably be practical, the 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.

**16.4** The Scheme has full discretion to conduct any proceedings in connection with any Claim.

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

**16.6** Notwithstanding Rules 16.1, 16.4 and 16.5, a Member shall not be required to contest any legal proceedings unless a solicitor (to be mutually agreed upon by the Member and the Scheme) advises that such proceeding should be contested, with the reasonable probability of success or partial success.

## 17. MEMBERS' LITIGATION RESPONSIBILITIES

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

- (a) if a personal appearance by an elected member, officer or agent of the Member is necessary at any conference, in any Court or elsewhere, the expense of such an appearance shall be borne or paid by the Member;
- (b) The 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;
- (c) The Member may, upon notice in writing, prevent a settlement proposed by the Scheme of litigation or a claim brought or made against the Member, but if it does so and the claim is ultimately settled (or judgement is ultimately given) for a higher amount, then notwithstanding Rule 8, the Member must pay as estimated by the Board 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.

## 18. AUTOMATIC REINSTATEMENT

Upon notification to the Scheme of a Claim, cover under the Protection Wording shall be reinstated for such amount as may be ultimately paid by the Scheme in respect of such Claim up to the limit, if any, imposed by the Protection Wording.

## 19. CONTRIBUTION FROM OTHER INSURERS

When a loss paid is recoverable under an insurance policy, then the Scheme reserves its rights to seek full recovery from the insurer.

## 20. NOTICE TO SHOW CAUSE WHY ALL OR SOME COVERAGE SHOULD NOT BE CANCELLED

In the event that a Member (in this Rule referred to as the 'Defaulting Member'):

- (a) Fails to comply with the reasonable directions of the Scheme as to the conduct of its operations so as to minimise risks;
- (b) Fails to make available to the Scheme Manager or Fund Manager all information and data which either of them reasonably require in order to determine the claim and risk management experience of the Member for the purpose of assessing contributions;
- (c) Fails to permit the Scheme Manager to carry out a risk management audit or otherwise inspect the Member's property and operations;
- (d) Fails to permit the Scheme Manager to examine and audit the Member's books and records (but only so far as they relate to its Membership(s) of the Scheme or risks covered by the Scheme);
- (e) Fails to pay contributions due to the Scheme within the time prescribed by these Rules or by the Board;

- (f) Commits any other breach of these Rules which is not remedied within the time specified in a notice to the Defaulting Member -

then in that regard the Board may by notice in writing to the Defaulting Member require that it show to the Scheme good cause within 14 days why all or some of its Coverage should not be cancelled.

## 21. REDUCTION OR CANCELLATION OF COVERAGE

**21.1** The Board may, by special resolution, cancel or reduce Coverage for a Member by giving that Member notice in writing to that effect where the Member:

- (a) Fails to comply with the duty of utmost good faith;
- (b) Fails to comply with the duty of disclosure;
- (c) Has made any fraudulent claim to the Scheme or under any contract of insurance; or
- (d) Fails to show sufficient cause to the contrary in response to a notice issued pursuant to Rule 20.

**21.2** A notice of reduction or cancellation of Coverage takes effect at whichever occurs first between

- (a) The time when a policy of insurance between the Member and an insurer, being a policy of insurance that is intended by the Member to replace all or a good proportion of the cancelled Coverage is entered into; and
- (b) At 4.00 pm on the 30th day after the day on which notice was given to the Member (or such later time as specified in the notice).

**21.3** Cancellation or reduction of Coverage does not vary or waive the obligations of a Member to comply with the Deed of Trust and the provisions of these Rules.

## 22. REASONABLE CARE BY MEMBERS

Members shall:

- (a) Exercise reasonable care that only competent employees are employed;
- (b) Take reasonable measures to maintain all premises, fittings and plant in a safe and sound condition;
- (c) Take all reasonable precautions to prevent loss or damage to property and personal injury;
- (d) Take all reasonable precautions to prevent the manufacture, sale or supply of defective products;
- (e) Take all reasonable precautions to prevent the release, issue, tender or supply of defective or erroneous advice or information;
- (f) 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
- (g) At their 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 Member (including any container thereof other than a vehicle) containing any defect, error or deficiency of which the Member has knowledge or has reason to suspect.

## 23. SCHEME DOES NOT WARRANT RISK LEVELS

Each 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 Member or others, to determine or warrant that such property or operations are safe or represent any particular level of risk to liability.

## 2009–10 FUND YEAR MEMBERSHIP

Ashburton District Council  
Auckland City Council  
Auckland Regional Council  
Carterton District Council  
Central Hawke's Bay District Council  
Central Otago District Council  
Chatham Islands Council  
Christchurch City Council  
Clutha District Council  
Environment BOP  
Environment Canterbury  
Environment Southland  
Environment Waikato  
Far North District Council  
Franklin District Council  
Gisborne District Council  
Gore District Council  
Hamilton City Council  
Hastings District Council  
Hauraki District Council  
Hawke's Bay Regional Council  
horizons.mw  
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  
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  
Rodney District Council  
Rotorua 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  
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  
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  
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Scheme Manager Jardine Lloyd Thompson Limited

Fund Manager Civic Assurance

Scheme Solicitors Heaney & Co

Scheme Auditors Deloitte Touche on behalf of the Auditor-General



**economics**

## **THE BENEFITS OF RISKPOOL TO LOCAL GOVERNMENT MEMBERS**

Prepared by: Jason Leung-Wai, Dr Ganesh Nana

March 2010

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# Benefits of Riskpool

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## 1 Introduction

BERL has been asked to prepare a concise report that discusses the benefits of the Riskpool approach (a Mutual Liability Fund) to providing public liability and professional indemnity cover to the local government sector. These benefits are alluded to in the Fund's mission statement, which includes:

- assisting and encouraging Local Government to take greater collective responsibility for managing liability risks
- 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.

Our analysis is largely desk-based, drawing on annual reports, insurance industry statistics, and a literature search on the benefits of mutual liability funds. This was supplemented by discussions with Riskpool's service providers: the fund manager, scheme manager and scheme solicitor.

Chapter 2 provides an overview of Riskpool and the reasons why it formed in 1997. Chapter 3 provides the analysis as to why a Mutual Liability Fund such as Riskpool delivers better outcomes to councils than commercial insurance. The analysis provides both argument and quantitative data in relation to Riskpool and the New Zealand insurance market to support the arguments. Conclusions are summarised in Chapter 4.

Our review of its activity in the current economic environment suggests that Riskpool is achieving the objectives they set out in their mission statement. As such, we believe that the Mutual Liability Fund approach will achieve the best outcomes for local authorities over the long-term in relation to public liability and professional indemnity insurance.

## 2 Background

This section provides an overview of Riskpool, its aim and its services. It also looks at what was available before Riskpool and the factors that led to its establishment.

### 2.1 WHAT IS RISKPOOL?

Riskpool is a mutual liability fund created by New Zealand local authorities to provide long-term, affordable legal and professional indemnity, and public liability protection. It is based on similar mutual funds established by local government bodies around the world as an alternative to conventional insurance products and the insurance industry's inconsistency in scope of cover, pricing, claims handling and capacity.

*"We are completely different from an insurance company, which naturally puts its own needs first and the member's needs second".*

*(Riskpool, 2009)*

Membership of Riskpool is open to all local authorities. Contributions are levied according to each member's actual risk profile, claims experience and management of risk. The Fund buys reinsurance to manage its overall exposure.

The aim of Riskpool is to provide a specialist service which responds to its members' liability exposures. This is achieved by providing members with:

- fund administration, risk management and claims management
- information and advice on all aspects of local government liability exposures.

Riskpool replaces conventional public liability and professional indemnity insurance products with discretionary mutual protection from risk.

- Members receive cover up to:
  - o \$100 million for professional indemnity
  - o \$100 million for public liability.
- There are minimum deductibles of:
  - o \$10,000 for public liability
  - o \$2,000 for professional indemnity.

Members may elect higher deductibles with an appropriate reduction in contributions.

Civic Assurance holds the shares of the trustee company for Riskpool on behalf of Riskpool's members and is responsible for appointing Riskpool's directors. Civic Assurance, which is New Zealand's specialist provider of insurance, mutual funding and risk financing for local government, is owned by local authorities.

## 2.2 PRE RISKPOOL

Prior to Riskpool being established, local government insured against liability claims within the commercial market, where there were three main insurers. However, after a tumultuous period in the early to mid 1990s, local government came to the conclusion that the commercial market was not providing the best risk-financing solution and the Mutual Liability Fund (Riskpool) was established.

There were some major factors around cost, uncertainty and coverage specific to liability that was faced in dealing with private insurers. Interestingly, two of the three main private insurers for local government liability in the 1990s no longer exist. They were HIH and FAI.

Firstly, liability insurance usually involved a long latency period, with claims often occurring well after the year in which insurance cover was provided. Also, the settling of those claims could take a long time. The long term nature of liability claims was inconsistent with the competitive model.<sup>1</sup>

Secondly, there was a common law vacuum in the area of local government liability, with little case law to draw on for decisions. Outcomes of claims were uncertain and the risk was potentially significant and difficult to assess. Driven by a profit model, commercial insurance tended to err on the side of caution, with excessive premiums. Furthermore, claims tended to be settled to minimise the cost to the insurer, with the potential to set poor precedents.

Finally, in tougher economic times, there were issues with the level and type of cover the client received. This often led to disagreements on payouts and suboptimal coverage for local government.

<sup>1</sup> For example, claims were very rarely settled in the first year of the policy. Therefore, insurers could charge as little as required to secure the policy. However, once locked into a policy, premiums could increase to cover any potential losses, particularly if there were outstanding claims. This put significant bargaining power with the insurance companies who essentially had a 'heads-I-win and tails-you-lose' contract.

The combination of these factors led to the establishment of Riskpool, which commenced on 30 June 1997. Membership increased steadily from an initial 57 in the 1997/98 Fund. Membership peaked in the 2004/05 Fund at 82. The 2009/10 fund year has 78 local authority members out of a potential 85.

## 3 Analysis

This report analyses the benefits of a Mutual Liability Fund such as Riskpool in light of the recent demands for further calls on funds<sup>2</sup> and the availability of alternative insurance options with similar terms but with no risk of further contributions if funds come up short. Possibly as a result of this call on funds, as well as alternative options being offered, some local authorities have opted out of Riskpool for their current liability cover(s).

This section sets out the arguments for local authorities belonging to a Mutual Liability Fund, such as Riskpool. In areas these benefits are compared to alternative options, in particular through insuring privately.

The analysis is broken down into two areas:

- lower public liability insurance costs
- better service delivery.

The major outcome that we arrive at in our analysis is that

*in sum, a Mutual Liability Fund approach results in lower liability insurance costs and improved service delivery for ALL Local Authorities.*

While we do not provide definitive quantitative proof of the previous statement, the qualitative arguments and the available data on the administrative performance of Riskpool do support it. These arguments are discussed in turn.

<sup>2</sup> The recent call for further contributions can be attributed to the "leaky building" issue. Without leaky buildings further calls for contributions would not have been made. However, at the same time, Riskpool's response to the "leaky building" issue by continuing to provide cover is a prime example of why the Mutual Liability Fund approach is superior to a private insurance option. Further, Riskpool has taken steps to ensure that leaky buildings claims will not impact on future fund years while still maintaining cover for low-risk local authorities. More discussion on the leaky building issue is included as an appendix to this report.

### 3.1 LOWER LIABILITY INSURANCE COSTS

A mutual liability fund ultimately results in lower liability insurance costs. This comes about because of:

- lower administrative costs
- better outcomes on contested claims
- the reduced number and value of claims
- there not being a shareholder imperative to deliver a return on equity – removing the “profit” motive.

#### 3.1.1 Better outcomes on contested claims

*The specialist nature of the portfolio suggests that any claims and legal requirements can be more efficiently and effectively provided by Riskpool than a general insurer, particularly when it comes to avoiding unwanted legal precedents.*

Riskpool is run by experts in the field of public liability and professional indemnity insurance for local government. Riskpool’s fund manager, scheme manager and solicitor have extensive experience and expertise in managing local government liability claims. They receive a more positive response from political and public media as the “guardians of ratepayers’ money” or “stewards of the public purse”.

On average, Riskpool manages between 600 and 800 claims a year. As claims managers focused on local government issues, they are quickly able to determine which ones are nuisance claims, which ones should go to mediation and which ones should be contested. In most cases, claims are either withdrawn or are settled through mediation.

Expert handling minimises the possibility for **all councils** of unwanted legal precedents being set. However, there is also a focus on selecting cases that will improve common law or establish common law for local government.

The scheme solicitor is Heaney and Co, which has acted for local and regional government in New Zealand for many years principally in respect of liability claims. David Heaney SC, the senior partner in Heaney and Co, has specialised in cases relating to local authorities. David has been involved in more trials involving local authorities in the last ten years than any other practitioner.

As a result of the focus of Riskpool, a significant proportion of Riskpool’s costs goes toward improving Councils’ liability risk profile and managing claims. It is unlikely that one would get the same level of commitment, expertise and therefore outcomes through a private insurance company.

#### 3.1.2 Reduced number and cost of claims

*By vigorously defending spurious or contentious claims, Riskpool reduces the absolute number and cost of future claims for all councils.*

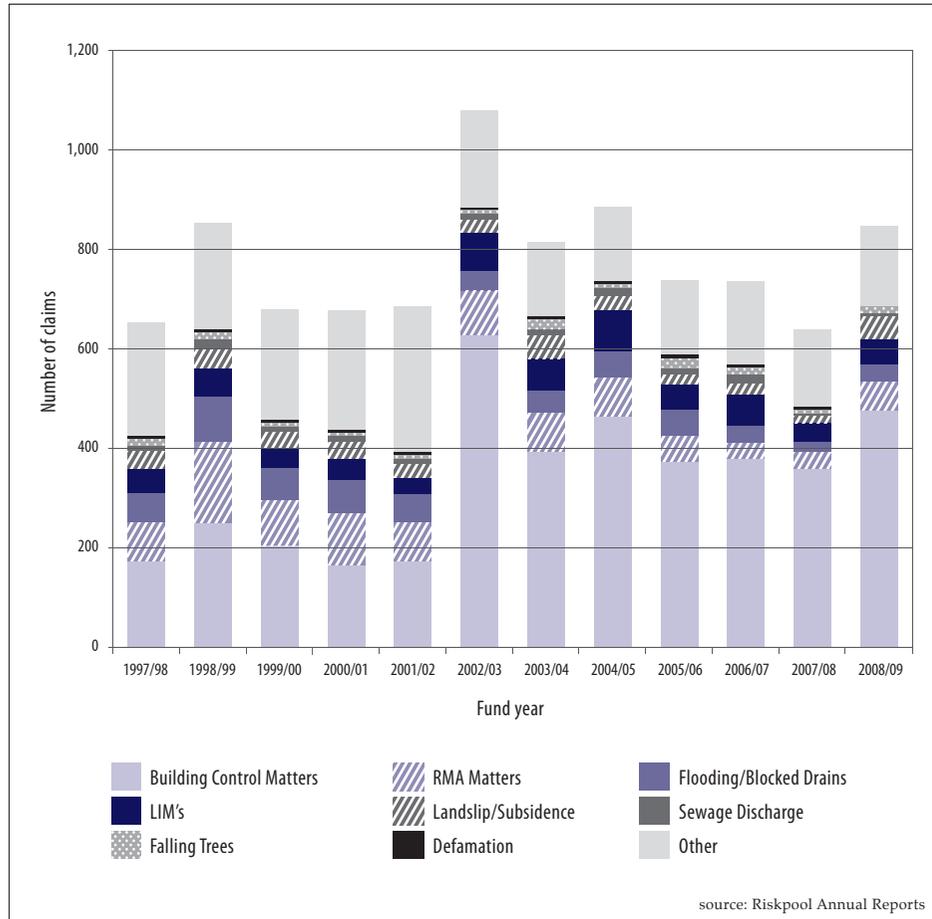
Riskpool takes a long-term view of its members’ liabilities and is very careful in managing claims to avoid unwanted precedents.

Being profit motivated, private insurer decisions to defend against claims would be based on cost, payout and probability of success in fighting the case; as opposed to ensuring that poor precedents are minimised. Hence, a private insurer may be willing to pay out on a claim rather than try to defend it if it felt that it would be the less costly option. This could have a negative impact on similar claims across other local authorities.

Hence, public good and positive externalities are accruing to all councils, regardless of whether they are members of Riskpool or not. To an extent those that are not members of Riskpool are free riding on the efforts of Riskpool to minimise its members’ exposure to risk as these efforts do not come without an additional cost.

In the 12 years to 30 June 2009, Riskpool has received notification of around 9,600 claims.

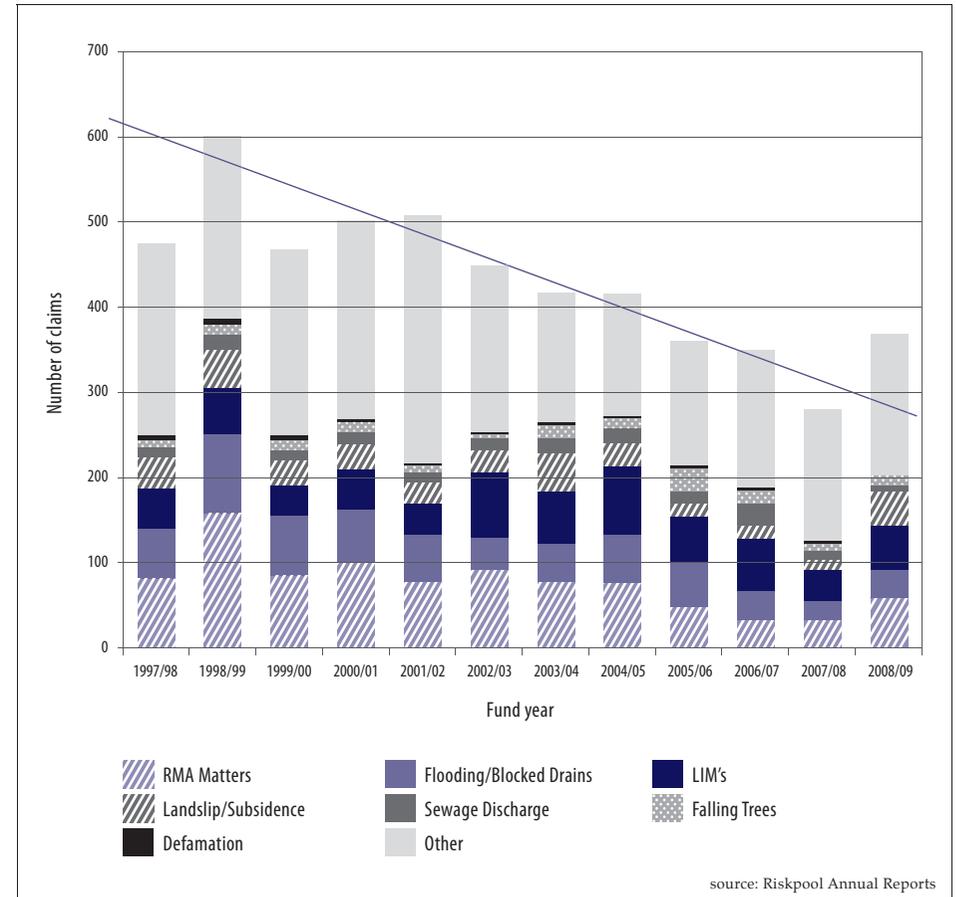
Figure 1. Number of claims



The number of claims had been declining since 2002/03 before increasing again in 2008/09. However, a large proportion of the claims have been due to leaky buildings (included in the above table under the heading of 'Building Control Matters').

Excluding leaky buildings from the analysis we can see that the number of claims have been easing over time.

Figure 2. Number of claims (excluding building control matters)

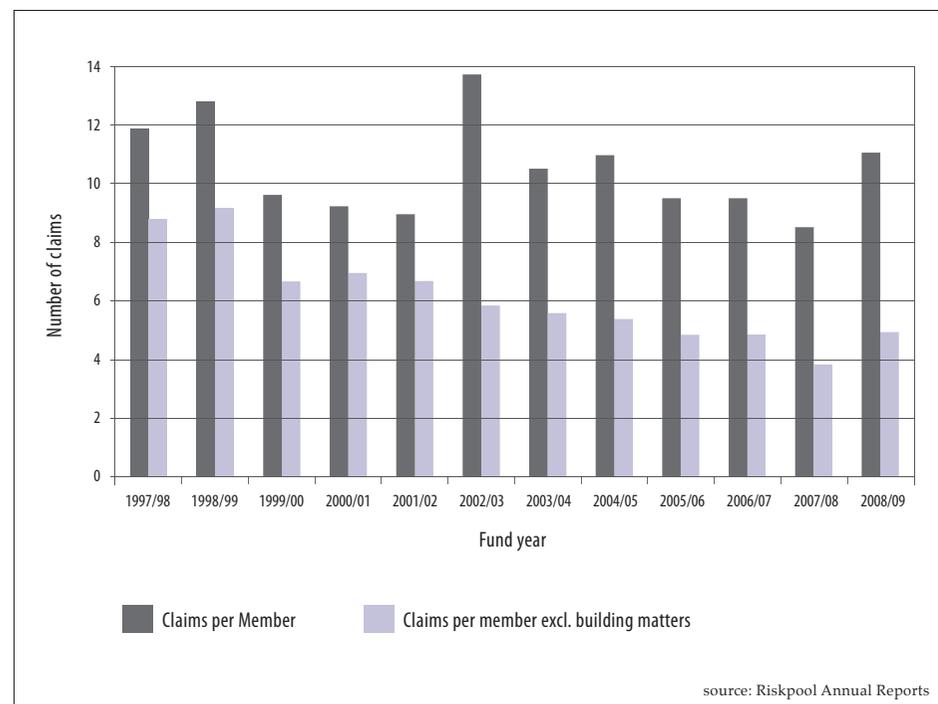


The trend-line suggests a reduction in the total number of claims.

While the absolute number of claims has increased in the latest year, this could be the result of a range of factors, including the difficult economic environment, where there is a general increase in claims, media coverage of leaky buildings, and the fact that the Council is often the first to be charged or the last man standing.

The number of claims falling is supported by looking at the average claims per member, especially when claims for building control matters are excluded.

**Figure 3. Average claims per member**



An analysis (Christie, 2010) of reinsurance claims to identify claim costs for the fund years 1998 to 2010 suggests a fall in claim costs as well as the number of non-zero claims<sup>3</sup>. This is shown in Table 1 below.

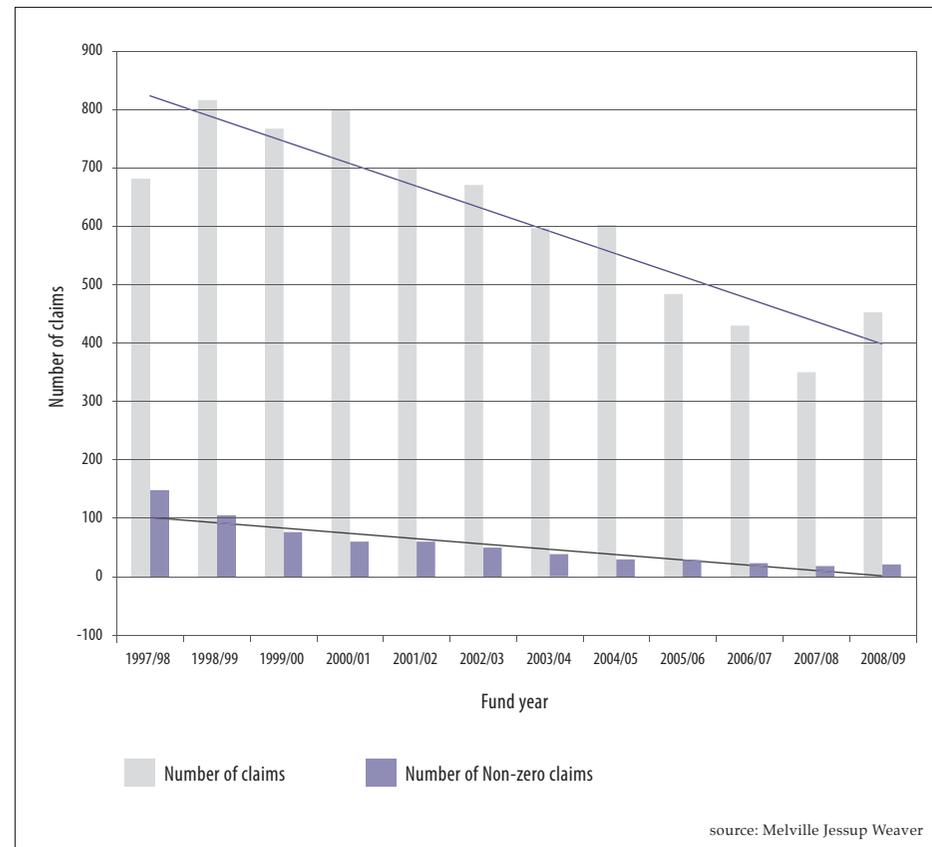
**Table 1. Summary of Riskpool Claims by Fund year (excluding leaky building claims)**

Fund Year	Number of claims	Number of Non-zero claims
1997/98	682	144
1998/99	820	101
1999/00	770	71
2000/01	802	60
2001/02	698	57
2002/03	673	48
2003/04	596	37
2004/05	604	23
2005/06	482	25
2006/07	428	18
2007/08	351	16
2008/09	453	18
2009/10 (incomplete)	177	1
<b>Total</b>	<b>7,536</b>	<b>619</b>

<sup>3</sup> Non-zero claims are those claims that are settled with some defense and /or settlement costs or that have some case estimate figure. Zero claims are notifications that go no further.

The number of claims has dropped from an average of 754 in the first five fund years to around 464 in the latest five fund years. More important the number of non-zero claims has fallen from 144 in the 1998 year down to 18 in 2009. The decline in non-zero claims has been consistent over the analysis period dropping from an average of 87 in the first five fund years to 20 in the latest five fund years. The dramatic fall in the number of claims and non-zero claims over the life of the programme is shown graphically in Figure 4.

**Figure 4. Number of non-zero claims (excluding leaky homes)**



### 3.1.3 No profit margin

*Riskpool is controlled by the councils and is not-for-profit, so decisions are made in local government's best interest as opposed to maximising someone else's profitability. Member contributions are thus minimised.*

Regardless of the other benefits of a mutual liability fund, such as reduced claims and better practices, private insurance is likely to be more costly to local authorities than a Mutual Liability Fund in the long-run.

This is because the ultimate responsibility of a private insurer is to make a return for its owners or shareholders. Insurance companies will only survive if they make a profit. From 2002 to 2006, the gross profit in the insurance industry in New Zealand ranged between 5 percent and 11 percent, averaging 8 percent.<sup>4</sup>

Aside from required return to shareholders, there are other factors that result in insurance companies having higher cost structures.

First, Riskpool is unlikely to have to absorb **insurance fraud**, which is estimated to account for up to 10 percent of total premiums in the New Zealand insurance industry. Different classes of insurance have different levels of fraud ranging from 5 percent to 20 percent.<sup>5</sup>

Second, insurance companies tend to separate risk across insurance classes. For example, the Insurance Council reports annual statistics across seven insurance classes. Within each separate portfolio the intention is to make a profit.

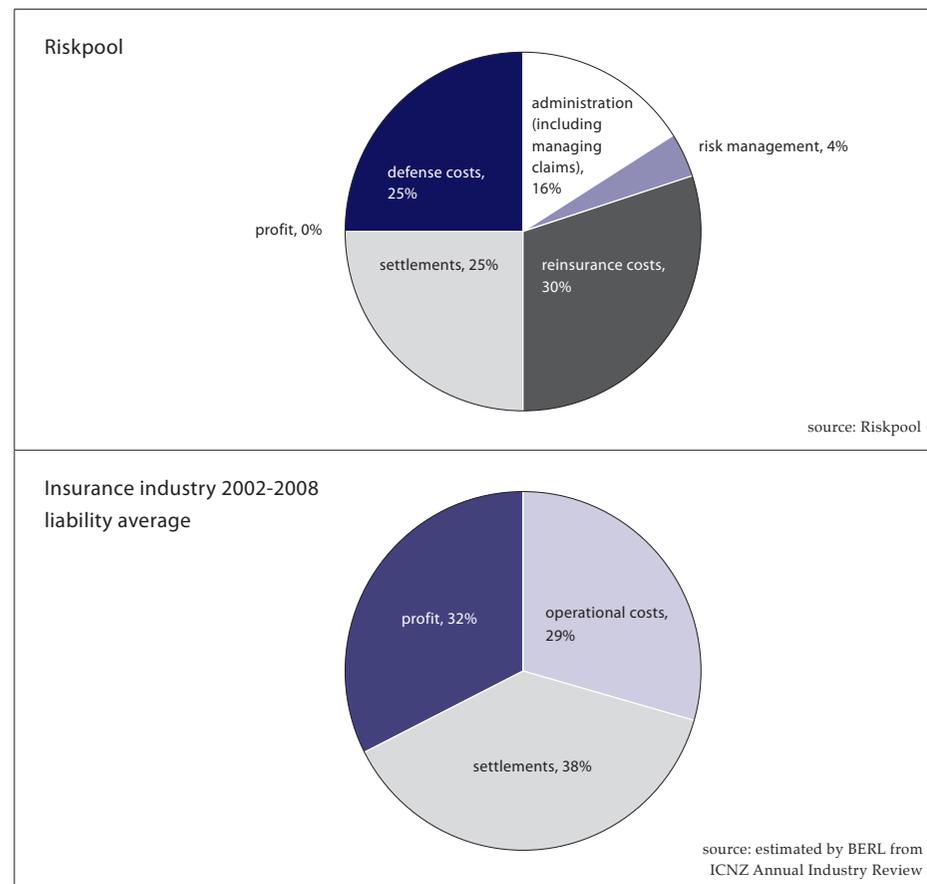
Local government liability insurance is a very specialised area and one where any insurance class is likely to be ring-fenced. That is, the insurance company would need to make a profit within this insurance class. Over the long term, an insurance company would be unlikely to continue to spread profits from profit making insurance classes to cover loss making areas. Hence, one would expect premiums to increase if claims exceeded revenues for too long, as would have been the case in leaky buildings.

<sup>4</sup> Gross profit as a percent of net earned premiums. Data from the Insurance Council of New Zealand's Annual Insurance Industry Review 2006-07.

<sup>5</sup> From (Insurance Council of New Zealand, 2010).

According to the Insurance Council, the “liability” insurance class had a claim to net earned premium over the 2002-2008 years of 38 percent, which suggests that only 38 percent of net premiums collected were paid out as claims. Including the New Zealand insurance industry’s average operational costs of around 29 percent of net premiums collected over that period, this suggests an average annual return of 32 percent on net premiums collected in this class.

**Figure 5. Where the liability premiums go**



This compares to Riskpool, where about 80 percent of premiums is spent on settlements, defense costs or reinsurance costs. Note that around 25 percent of premiums is spent on defense costs, which as well as reducing settlement costs serves a second purpose of improving or establishing common law for local government. Further, any profits from the Riskpool approach are retained for the benefit of its members.

Third, a key focus of insurance companies is maintaining cash-flow. Claims in the liability area don’t tend to be raised in the year in which the premium is paid. Further, it could be several years before the claim is realised. This suggests that the cost of entering into this area is very low in the first instance and insurance companies could realistically enter the market offering very low premiums. However, they would then have to ratchet them up over time as claims start occurring to cover their costs. It is difficult for clients to bargain or move policies due to uncertainty over cover that can arise for claims that are lodged in subsequent years relating to prior events.<sup>6</sup>

A review of the Queensland Local Government Mutual Liability Pool (Local Government Association of Queensland, 2007), which is run in a similar fashion to Riskpool, found that based on actual claim costs since 1998<sup>7</sup>, it is estimated that Queensland councils would have paid an additional \$50 million in premiums had they been arranging insurance on an annual basis through the traditional Australian market. In addition, the review found that the Mutual Liability Pool maintained relative cost stability for members as well as benefiting from a range of insurance cover specifically relevant to local government.

From year 10 to year 13, the average member contribution to Riskpool has dropped from \$105,000 to \$58,300, in part because Riskpool no longer provides leaky building cover to the majority of members. However, the average Riskpool contribution for fund year 13 is less than it was 10 years ago even though the cover has increased to \$100 million per member.

Further, due to the decision to put limits on leaky building cover and the decision to take out full reinsurance cover, there is no longer a risk (other than the remote possibility of a very large claim coinciding with a reinsurer failing) for further calls on Riskpool’s members. In fact, the only significant risk is on the upside, where any excess revenue may be returned to Riskpool’s members.

<sup>6</sup> This was a major reason why Riskpool was initially set up in 1997.

<sup>7</sup> When reinsurance for claims in excess of \$1 million were established.

### 3.2 IMPROVED SERVICE DELIVERY

*Riskpool's activity around management risk practices and improving common law for local government liability generates benefits for ALL local authorities, not just members.*

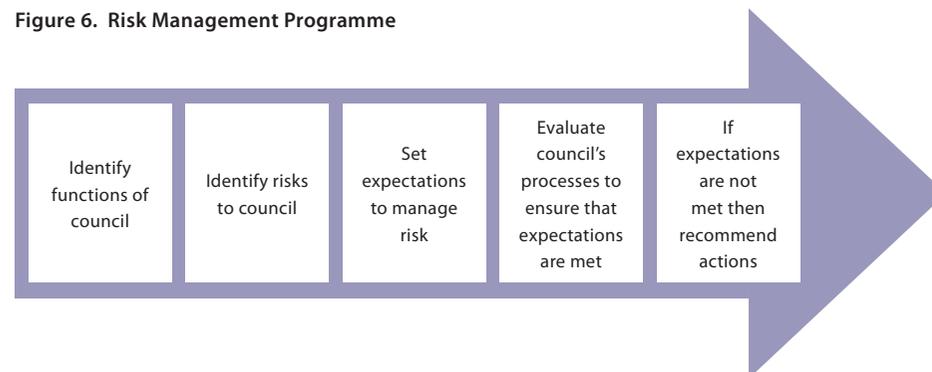
Local government activity is unavoidably open to public liability through its:

- ownership and operation of infrastructure
- administration of government acts.

Riskpool works to **improve the risk management practices of its members**. By disseminating and facilitating understanding and knowledge amongst Councils the number of claims against members has reduced. Riskpool also runs a risk management assessment model where expectations are set for individual councils in relation to their activity. If expectations are not met then recommendations are made to councils on how to achieve expectations.

The programme looks at the key acts that local government administers – the Building Act, the Resource Management Act, and the LGOIMA<sup>8</sup> in particular, as this is the area giving rise to most claims. It determines the functions of the acts and the risks to individual councils. It then identifies the expectations to manage risk and then evaluates Council's processes to ensure that expectations are met. If these expectations are not met then the programme makes recommendations on what the council must do to meet them.

Figure 6. Risk Management Programme



In the latest year, the programme has also focused on practices and procedures around Land Information Memorandums (LIMs), providing training, seminars and advice.

The programme has also focused on building control by way of claims management, advice and assessment. Although the number of non-weathertight claims have doubled in the latest year, with good risk management practice around local government administration processes the majority of these have been defensible.

Returning to the subject of improved service delivery, Riskpool aims to reduce the risk around **dealing with and defending claims**. The focus is on improving or establishing common law for local government.

A major reason for Riskpool's high level of expenditure on defending claims is due to the vacuum of common law on which to use/draw upon. As a result of this vacuum, most early cases were solved through mediation. Thus a major goal has been to build up common law cases in an attempt to provide suitable precedents that will reduce nuisance cases or establish case law that will assist local councils in knowing what is required of them.

Riskpool has achieved this by carefully selecting cases that will improve common law or establish common law for local government. Some landmark cases include *Bella Vista vs. WBOP*, *Tindall vs. Far North District Council*, and *Atlas Properties vs. Kapiti District Council*. These cases have all contributed by setting common law precedents that have reduced liability risk to all councils. In these matters Riskpool has spent ratepayers' money to save ratepayers' money.

### 3.3 VALUE FOR MONEY

As stewards of public money, councils are obliged to consider the whole-of-life cost, which can easily be a lot more than the year one cost.

#### 3.3.1 Value for money 1997 to 2010

*Across the sector, Riskpool's handling of both leaky building and non-leaky building claims has saved councils a considerable amount of money.*

High leaky building claims on the fund led to a call on members of \$4 million in 2009 and it has been estimated that a further \$27 million is still to be called. This has provided an unwelcomed and unbudgeted cost for Riskpool's members, some of whom (regional councils in particular) had no exposure to leaky building claims.

<sup>8</sup> Local Government Official Information and Meetings Act.

All of this estimated \$31 million however will be returned to councils to meet claims for which insurance could not be bought. In addition, for every \$1 collected in calls by Riskpool around \$2.50 is expected to be recovered from Riskpool's reinsurers – an estimated saving to the sector of over \$75 million. The benefit of this recovery will not fall equally across the sector, but that is the nature of pooling risk.

For non-leaky building claims, the fall of actual claims (as opposed to notifications) has been remarkable. In Riskpool's first year there were 144 and in Riskpool's second year there were 101. For the last three complete Riskpool years the comparative numbers are 18, 16 and 18 (see Table 1). Average claim costs in total for the last three complete years for Riskpool are less than half what they were for both the 1997/98 and 1998/99 Fund years.

The unquantifiable saving from Riskpool is the extra that council's would have paid and would be paying for their liability cover if Riskpool had never existed. We cannot know what precedents would have been set if Riskpool had not existed to coordinate the bulk of the sector's claims management from 1997 and the financial effect that would have had. An assumption that this is another significant saving would not be unreasonable.

Again unquantifiable is the non-financial savings. Settlement of a liability claim obviously provides some compensation, but not having the claim in the first place would invariably have been a better outcome for both parties.

### 3.3.2 Value for money in the future

*Liability insurance for local government from the private market may not always be readily available on satisfactory terms, and a new vehicle similar to Riskpool is not something that could be constructed either quickly or easily.*

Undoubtedly the calls experienced by Riskpool's members are causing them to reconsider how they manage their liability risk-financing. Riskpool has stated, however, that it no longer provides any cover that is not reinsured. This means that a call on members for future fund years can only happen if one of Riskpool's insurers fails. In the unlikely event of an insurer failing, then it is better to share the cost of that through a pool than manage it on one's own.

There are three areas going forward where Riskpool's members can expect to save money compared to using the private sector:

- Better claims handling producing short and long-term savings.

- More effective management of the liability reinsurance program because Riskpool is able to share the same reinsurance arrangements enjoyed by over 600 Australian local authorities (through local authority liability risk pools similar to Riskpool).
- Riskpool is not-for-profit.

A reason for a local authority to be a member of Riskpool is to encourage other local authorities to do the same. This is because one council's error is every other council's peril (because a large liability claim paid on behalf of one council will affect future liability premiums for all councils) and Riskpool has a history of reducing the sector's claims and claim numbers.

Continuing membership of Riskpool has also allowed councils to avoid swapping insurers, which can create potential uncertainty and gaps in the cover because events leading to a claim and the notification of that claim can and often do fall in different insurance periods.

## 4 Conclusions

The analysis clearly supports a Mutual Liability Fund approach (such as Riskpool) over a mainstream private insurer for government liability insurance.

Riskpool was set up as a response to specific factors and the inefficiencies of mainstream insurers in providing public liability insurance. In terms of being a successful Mutual Liability Fund, its membership is at over 90 percent of potential members.

Riskpool continues to deliver benefits to its members in terms of:

- assisting and encouraging Local Government to take greater collective responsibility for managing liability risks
- 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 while minimising unwanted precedents.

Based on the underlying arguments and quantitative analysis, BERL believes that the Riskpool approach has been, and continues to be, beneficial to local government. This benefit arises principally through the Riskpool approach lowering public liability insurance costs and providing better service delivery.

## 5 References

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## 6 Appendix – Leaky Building Claims

*“The costs of resolving leaky building claims has been the property insurance equivalent of an earthquake”*

– (RiskPool, 2008, p. 2)

Riskpool continues to be dominated by leaky building claims, with over 60 of Riskpool's members having made leaky building claims. The increase in settlements has seen Riskpool's deficit rise from \$1 million to \$21 million. The average settlement per leaky home has almost tripled in only two years. Because of leaky buildings, members have already contributed a further \$4 million and further large calls are inevitable.

Riskpool was not fully reinsured for fund years 7 to 12 because full reinsurance for leaky homes was not available. Because of the size of the exposure, cover for members' "leaky building" claims has been significantly reduced since 1 July 2006. Covers provided by Riskpool for Fund 13 (current year) are fully reinsured.

Other than for some 'leaky building' claims prior to July 2009, the Fund itself is protected by external stop loss insurance to limit its liability for the self retention to a pre-determined aggregate amount for any particular fund period. There has been limited reinsurance for 'leaky building', claims from 1 July 2003, and none for the period 1 July 2006 to 30 June 2009.

Riskpool has taken a strategic litigation approach towards minimising the effects from leaky buildings claims, through improving or establishing common law in relation to the Building Act. This involves paying attention to the merits of each case and identifying those where litigation could result in reducing scope or level of risk. In general, Riskpool's position is that the focus of councils in relation to the Building Act should be on health and safety rather than ensuring the economic interest of third parties.

Riskpool has been successful in the Court of Appeal in the case of *Te Mata v Hastings District Council*, that a council does not owe a duty of care for building defects to the owner/operator of a motel. If Riskpool is successful in the Court of Appeal in the *Sunset Terraces* and *Byron Avenue* cases, where the issue is whether a duty of care is owed to an investor in a residential apartment, the ongoing reduction in the costs of leaky building settlements will be considerable.

**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;
- 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;
- 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;
- 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.
- 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.
- 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. THE FUND**
- 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:
- 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.
- 4.1.2 the premium payable to an appropriate indemnity insurer or insurers to provide Indemnity Cover for the Members during that Fund Year.
- 4.1.3 the operating expenses of the Scheme for that year.
- 4.1.4 the grants or allocations to be made pursuant to clauses 3.1.7 or 3.1.8 (if any).
- 4.1.5 any other amount determined by the Board to be required for the continuation of the Scheme.
- 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:
- 4.2.1 to the extent that the Underlying Claim does not exceed the amount of the Pooled Cover of the Annual Fund for that Fund Year from that Annual Fund;
- 4.2.2 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;
- (i) to the amount of the Pooled Cover, from the relevant Annual Fund for that Fund Year;
- (ii) thereafter from Indemnity Cover for that Fund Year to the extent of that Cover;
- 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;
- (i) to the amount of the Pooled Cover, from the relevant Annual Fund for that Fund Year;
- (ii) to the amount of the Indemnity Cover for that Fund Year, to the extent of that cover;
- (iii) the balance by the Fund from surpluses from previous Fund Years and from Additional Contributions from Members;
- (iv) to the limit of any guarantee provided by LGIC, by LGIC.
- 4.3 The Members shall be invited to Contribute to the Fund in the proportions to be determined annually by the Board. The Contributions by Members for each Fund Year shall be held and accounted for as a separate Annual Fund for that Fund Year.

- 4.4 Trustee Company shall administer the Fund with the intent that upon the settlement of all Claims made in respect of occurrences or events arising during the relevant Fund Year;
- 4.4.1 any surplus or anticipated surplus remaining in the Fund attributable to that Fund Year shall be allocated at the absolute direction of the Board towards liabilities of the Fund for any later Fund Year; and
- 4.4.2 any deficiency in the Fund shall be met by Additional Contributions by each Member in the proportion in which Contributions were made to the Annual Fund for that Fund Year.

## 5. BOARD OF TRUSTEE COMPANY

- 5.1 LGIC shall, following consultation with the Board, appoint persons (not exceeding a maximum of six at any one time) as directors for a term not exceeding three years and one month, and may following consultation with the Board at any time remove, with or without a replacement, any director.
- 5.2 Unless otherwise expressly provided in this deed or the Constitution, questions arising at any meeting of the Board shall be decided by a simple majority of the votes of those directors present and voting.
- 5.3 The quorum necessary for the transaction of business at meetings of the Board shall be the majority of the Directors. A director is to be counted for quorum purposes whether entitled to vote or not.
- 5.4 Subject to the provisions of this deed and any applicable law, LGIC shall determine, from time to

time, what (if any) directors fees, other valuable consideration or other benefit shall be paid or given by Trustee Company out of the Fund to any director in respect of that person's performance of duties as a member of the Board.

- 5.5 No director may hold office for more than twelve years, whether continuously or in aggregate over several periods.

## 6. DUTIES OF THE BOARD

- 6.1 The Board shall be responsible to LGIC as shareholder (as trustee for the Members). Notwithstanding anything to the contrary in the Constitution, the duties of the Board shall include:
- 6.1.1 Implementing and achieving the purposes and objects of the Scheme;
- 6.1.2 Considering all Claims made against the Fund and determining whether or not the Board's discretion should be exercised to meet the Claim for the Member from the Pooled Cover;
- 6.1.3 Ensuring the Scheme is and remains financially viable and solvent within the "solvency tests" laid down by the Act and generally at law;
- 6.1.4 Conduct its business in accordance with this deed and other Scheme Documents, and otherwise in such manner as is resolved by the Board from time to time;
- 6.1.5 Promulgating and amending the Scheme Rules and the Guidelines from time to time.

6.2 The Board shall regard the purposes and objects of this deed and the Scheme as being of paramount importance in decisions made and policies adopted by it in relation to the Scheme and shall adopt and use such management and other techniques as will ensure that those main objectives are achieved.

6.3 The Trustee Company being a wholly-owned subsidiary of LGIC (as trustee for the Members), any director may act in a manner which he or she believes is in the best interests of LGIC (as trustee for the Members) and the Members, notwithstanding that it may not be in the best interests of the Trustee Company.

6.4 A director who is an officer, employee, nominee or representative of a Member shall only be disqualified from voting on any matter that affects that Member if it affects the Member directly and in a materially different way from which it affects other Members or there are personal reasons why that director has a conflict of interest.

6.5 The Board shall from time to time appoint the Scheme Solicitor for such tenure and upon such terms as it shall in its sole discretion decide, but such appointment shall be formally reviewed by the Board at least every three years.

6.6 The Board shall be responsible for the financial management of the Scheme to the extent that it shall:

6.6.1 annually prepare the financial statements and, where considered necessary, report to the Members on any items arising from those statements;

- 6.6.2 annually determine the Guidelines for the Risks to be provided for from the Fund for any Fund Year;
- 6.6.3 annually determine the amount of Pooled Cover to be provided for the Members from the Fund for any Fund Year;
- 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;
- 6.6.5 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.
- 6.7 The Board may from time to time establish, or disestablish, a Claims Committee. Any such Claims Committee shall have such membership, duties, functions and powers, and be subject to such procedures, as the Board may from time to time stipulate. Where a Claims Committee is disestablished, its duties, functions and powers shall revert to the Board (but without prejudice to the validity or effectiveness of any act or omission of the Claims Committee prior to its disestablishment), and any reference in this deed to the Claims Committee shall be read accordingly.
- 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.
- 6.9 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.
- 6.10 The Board shall consider regularly the reports of the Scheme Manager and the Claims Committee in relation to Claims and:
- 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
- 6.10.3 shall, on written request from a Member, reconsider any Claim that has been rejected.
- 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 that Annual Fund in order to ensure that all Claims upon that Annual Fund are able to be met.
- 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.
- 6.14 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.
- 6.15 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.
- 6.16 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:
- 6.16.1 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.		
	(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:	11.4	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).
	(v) The investment of the moneys of the Fund not immediately required;		11.2.1	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:
	(vi) The allocation of surplus moneys in the Fund, if any;		11.2.2	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;
10.2.5	the preparation of the annual operating budget;		11.2.3	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.
10.2.6	the calculation of Contributions in conjunction with actuarial advice and advice from the Scheme Manager;		11.2.4		
10.2.7	the recommendation of the level of Pooled Cover to be provided in any Fund Year;		11.2.5		
10.2.8	the recommendation of the level of Indemnity Cover to be provided in any Fund Year.		11.2.6		
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

EXECUTED AS A DEED

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 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:

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

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

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;

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

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

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.

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

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)

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.

\_\_\_\_\_  
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 be made to the provisions of the original documents which take precedence.

