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

13 September 2000

Our Ref: LG03-0013-C

Mr Howard Stone
Chief Executive
Wellington Regional Council
WELLINGTON

Dear Mr Stone

Council's Flood Protection Policy

You will be aware that we have received a complaint in relation to how Council has applied its funding policy for flood protection. The complaint focussed on whether the way Council applied the 50:50 funding allocation for flood protection schemes has met the requirements of the Local Government Act 1974.

Funding Policy

We have reviewed the Regional Council's funding policy that was adopted on 15 June 2000. We note that the funding policy properly addresses the "three step" approach that is required under Section 122E of the Act. In determining its recommended funding policy Council decided it would "set rates on a scheme by scheme basis" and that between "0% to 50% of the costs will be met by general rate from the regional community". The factors that would be used to determine the allocation between 0% and 50% are noted in the funding policy.

Application of Funding Policy

Having adopted its funding policy, Council applied the policy in order to determine how to set its rates for flood protection schemes for 2000/01. Council, when applying its policy determined for each scheme that 50% would be charged to the general rate and 50% charged on a works and services rate to the ratepayers within the scheme or local authority area, as appropriate. This continued the same application of the previous funding policy.

Has Council complied with the Act?

The funding policy and process adopted by Council is one of the most comprehensive we have seen- We see no reason to question the legitimacy of the funding policy. Concerning

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the application of the policy to flood protection schemes, a question has been raised about whether the Council actively **turned** its mind in each case to the criteria adopted in the policy.

We have found no evidence that Council consciously adopted a **blanket** approach or actively disregarded the criteria in the policy. The policy provides for “some” flexibility within a particular range but does not require flexibility. Each decision was clearly within the parameters set by the policy.

The funding policy requires the Council to set rates for flood protection on a scheme by scheme basis. In the interests of transparency and in accordance with best practice, it would be reasonable to expect Council to record the factors leading to the 50/50 allocation for each scheme.

We have some concerns about the lack of detail recorded as to how the 50/50 allocation was determined in each case. However, we note that each scheme was listed in the relevant report (Report 00.435) so councillors were aware that a number of separate schemes were involved. The factors that councillors needed to consider in applying the policy to each scheme were outlined in the funding policy, which was adopted at the same meeting, **Councillors** were advised that ratepayers in **the** Wairarapa supported **the** 50/50 allocation.

Conclusion

Our role in such matters is to consider whether Council **has complied** with its legal obligations. It is not our role to determine this judicially and only the Courts could do that. From the evidence we have seen we do not consider there is any reason to question Council’s compliance with the Local Government Act 1974 :

- The **funding** policy was determined in accordance with Parr VIIA of the Act and took account of relevant principles;
- The application of the policy to each flood protection scheme was justifiable within the terms or parameters of the policy;
- There is some question as to how deeply Council considered the criteria in the policy in relation to each scheme but there are no grounds for us to say the decisions were unlawful.

As a result we will be taking no further action in relation to the complaint.

However, *in the* interests of transparency and best practice we would encourage Council in future to provide greater specificity and **linkage** between the recommended funding policy and the policy adopted for each scheme.

Yours sincerely

Kevin Brady
Deputy Auditor-General
