

Report to Policy & Finance Committee  
From: Stuart Macaskill, Chairman

## **Chief Executive Officers' Employment Contracts**

### **1. Purpose**

To inform the Committee about the current legal position regarding Local Authority Chief Executives' employment contracts.

### **2. Background and Comment**

(1) Councillors will be aware that a legal issue has arisen concerning employment contracts between Councils and their Chief Executive Officers.

(2) It has always been clearly understood that such a contract cannot be for more than five years. The point at issue is whether a new contract can be entered into at that stage without external re-advertising. A recent opinion from the Solicitor General is that the maximum term of employment for Chief Executives **without re-advertising** is for five years. This is unlike the State Sector where contracts can be re-negotiated without re-advertising subject to acceptable performance.

(3) Many Councils have re-negotiated contracts with CEO's beyond the five year maximum without re-advertising. This Council is one such Council. Mr Stone's contract has been renewed in this way and his present contract continues until 31 December 2001. (It would be fair to say that where Councils are not in this position, the CEO will almost certainly have less than five years service).

(4) The background is well set out in following papers which I **attach**.

Attachment 1            Letter of 7 September to General Manager from  
Mr K Brady, Assistant Auditor General.

Attachment 2            Letter of 10 September to General Manager  
from SOLGM President, Darryl Griffin.

- Attachment 3            Memorandum of 10 September to all Mayors/Chairs from Louise Rosson, President of *Local Government New Zealand*.
- Attachment 4            Letter of 14 September to Minister of Local Government from Louise Rosson, President of *Local Government New Zealand*.
- Attachment 5            Letters of 15 September from General Manager to Mr K Brady, Assistant Auditor-General and Ms Carol Stigley, Chief Executive, *Local Government New Zealand*.
- Attachment 6            Responses to General Manager's letter of 15 September from *Local Government New Zealand* and Assistant Auditor-General.
- Attachment 7            Opinion of 21 September from Mr D Broadmore, Broadmore Barnett.
- Attachment 8            Opinion of 4 October from Mr D Broadmore, Broadmore Barnett.

- (5) Because it was perceived that there may be very serious consequences, it will be noted that separate legal advice has been obtained on behalf of Council. This advice was contained in the opinions from Mr Broadmore in the letters dated 21 September and 4 October.

He concludes:

*"In summary therefore we consider that there are potential risks both as between the Council and its General Manager and as between the Council and the third parties arising from the possible invalidity of the appointment of the General Manager. Given that the appointment remains valid until such time as a Court declares it to be otherwise however, and given the discretionary nature of the remedies available on judicial review, we consider that it is unlikely that any such declaration will be made by a Court except in certain exceptional circumstances.*

*We consider that there is little, from a practical point of view, that the Council can do to remedy the situation short of having the legislation amended."*

- (6) Legislative change, as it potentially affects all Councils, is clearly appropriately pursued through national organisations such as *Local Government New Zealand* which is working closely with the Society of Local Government Managers on this matter.
- (7) As you will note from the attachments, suggested legislative changes have been forwarded to the Minister of Local Government.

It is of course completely unrealistic to expect early enactment of amending legislation.

### 3. Recommendation

*That the Policy & Finance Committee recommend to Council that it:*

- (1) *note the information and receive the Report;*
- (2) *express its continuing satisfaction with the performance of Mr Stone;*
- (3) *endorse the action being taken to regularise the position through legislation.*

STUART MACASKILL  
Chairman

Attachments