

councillors be paid a salary as determined by the Commission in their determination at the previous 1 July. Once the councils have had time to consider how they will operate, they can recommend to HSC salaries for positions such as the chairs of committees and the additional salary can apply retrospectively. These positions would then receive back pay in respect of the period from the elections until 1 April the following year. The council could also make recommendations on what remuneration should be payable from 1 April (including meeting fees if so desired). This is a possible scenario which might achieve an equitable result but would mean that no meeting fees (other than for statutory hearings) would be payable during this initial period. The Commission would appreciate any views or ideas that you might have on this issue.

4. Mayoral Vehicle.....in September 1999 Council leased a vehicle for the Mayor's private use. The Market Value of the vehicle was \$40,227.....is that the figure that would be used in the calculation of the deduction from the Mayor's salary?

Answer: Yes.

5. Would the '*recovery of expenses by members*' be paid from the indicative pool or not?

Answer: No, it would not be part of the indicative pool.

6. In the event that the HSC approved meeting fees (allowances) for Councillors, would these be payable for '*attendance at certain conferences and meetings*' as currently permitted by the now repealed s101ZZO of the LGA 1974?

Answer: A council which recommends meeting fees will also need to recommend the rules applicable. If these rules included "attendance at certain conferences and meetings" this is likely to be agreed to. At the end of the day, it has to come out of the fixed indicative pool."

7. In the event that Council decided to change to the new remuneration basis, all Community Boards would be required to change to the new system as well? (Surely yes?)

Answer: Yes.

8. In the event that Council elected to change to the new system of remuneration and the Mayor wished to remain on the present system, would his recommendation to the HSC to do so gain automatic approval?

Answer: The Commission is concerned that the Mayor is elected independently to the council and accordingly, should be able to make their own decision as to whether to change to the new system between 1 July 2003 and the next elections. It is therefore very likely that HSC will agree to the Mayor's own recommendation. However, if the council opts to go to the new basis, the amount to be debited to the pool on behalf of the Mayor will be the salary proposed under the new system irrespective of the Mayor's election. The only exception will be if a case is made that the Mayor's salary should be reduced because he/she is delegating some of the

responsibilities to, say, the Deputy Mayor and the Commission agrees that this is appropriate.

9. In the event Council elected to change to the new system of remuneration and the Mayor's desire to remain with the present system was approved by the Commission, would the approximate saving of \$25,000 on his salary have the effect of increasing the amount available (in the pool) to Councillors and Community Board Members?

Answer: Covered in (8) above.

10. Is the adjustment for growth correct? Memo said if above average would be adjusted by % above.

Answer: Where the growth rate is higher than the average, the adjustment factor used is - (Actual growth rate - Average growth rate).

11. Re the assets figure. Should investments be included?

Answer: Yes.

12. Is the Mayor entitled to claim \$60 per hour for statutory hearings they attend in addition to their salary determination?

Answer: There is no simple answer to this. Clearly if the mayoral position is paid on a full-time basis the answer is no but where it is only considered a part-time position, the answer could be yes. On balance the Commission is of the view that the Mayor of a council and the Chair of a regional council should not be entitled to be paid for statutory hearings.

13. We assume that councils decide on what their community boards get paid and how, then pass this recommendation on to the HSC with any Community Board dissent noted.

Answer: The Commission decides what a community board gets paid. The Commission would hope that the recommendation it receives would effectively be a joint recommendation but if the council and the community board cannot agree then in reality we will receive separate recommendations.

14. Could HSC provide clarification that if the council decides to continue with the current remuneration basis until the 2004 triennial elections, the remuneration actually paid in the period July 2004-October 2004 inclusive will not be counted as part of the pool for that year, rather the new council which comes into office following the elections will have 8/12 of the pool available for the period from November 2004 to June 2005 inclusive.

Answer: As set out in our answer to Question 3, the Commission has not yet resolved how it will formulate its determinations as at 1 July 2004. Based on current thinking we would continue the present system except that if the scenario set out in the answer to Question 3 was adopted, then the indicative pool would be split into three separate parts, namely:

A42

- (a) The period from 1 July 2004 to the date of the local body elections. In determining the remuneration for this period we would consider the recommendations from each council and allocate a portion of the pool based on the number of days from 1 July to the elections.
- (b) The period from the date of the elections to 1 April 2005. For this period we would set fixed salaries for each councillor and community board member.
- (c) The period from 1 April 2005 to 1 July 2005 together with back pay in respect of period (b) above. The residue of the pool would be available for this remuneration and the Commission would invite recommendations from each council

Please accept that these are only preliminary thoughts which hopefully will stimulate suggestions from councils and community boards for the Commission's consideration.

15. Does a council have to pay itself the full amount of the pool?

Answer: The Commission is trying to remove politics from the remuneration of elected members. We understand that there have been instances where wealthier councillors have suggested that the remuneration should be reduced which can put pressure on other councillors to take a lower pay, even though they may need the income. The Commission believes that elected members should receive the remuneration as determined by the Commission. On an individual basis they could, if they so wish, pay tax on the remuneration and then give back all or part of the net income to council. They could also give it to charity.

16. Where members attend statutory meetings, would they, in addition to the hourly rate, be eligible to claim mileage or does the hourly rate cover that?

Answer: An elected member would be entitled to claim mileage for attending a statutory hearing.

Hutton Peacock

H D Peacock
Chairman

HIGHER SALARIES COMMISSION

30 January 2003

To: All Mayors/Regional Council Chairs
All Elected Members (including Community Board members)
All Chief Executives

Please find attached a further set of questions and answers following on from our email of 22 January 2003. A number of questions concern Community Boards. PLEASE ENSURE that a copy is sent to each Community Board.

17. Our Community Board Chair is also a Member of the Council. He was one of the three Council appointments to the Board. The Board is currently comprised of 3 appointed representatives and 6 elected (of the 6 elected, 2 are also Members of the Council).

Is half of the salary for the Chair taken from the "pool" for calculation purposes? Whilst your determination states that it does not apply to any remuneration paid to appointed Members of the Community Board; it is by coincidence that the Chair is appointed, rather than having remained elected. He could have remained as an elected Member and another Member of the Council could have resigned from the Board and been appointed.

Answer: The salary of a councillor who is also appointed to a Community Board is deducted from the pool in full. Thus in the instance above, any salary paid on account of the Councillor being Chair of the Community Board will be deducted from the pool. The 50% deduction only applies in respect of elected members of the Community Board. We do not believe that the Chair of the Community Board could have remained as an elected member and also been a councillor. This is prohibited by section 33 of the Local Electoral Amendment Act 2002.

18. There is one personal matter that could affect me and about which I would like further clarification. If the District Council should elect to continue with the present conditions of remuneration and expenses until the date of the next local body election, may I as Mayor nevertheless personally elect to adopt the new remuneration and expenses on the basis to be determined by your Commission to come into effect from 1 July 2003?

I have been led to believe that the answer to this question may be "NO" I may not in those circumstances have the right to make that election. I have been told however that if my Council does choose to adopt the new remuneration from 1 July 2003 then I in those circumstances still have the option to continue with my present conditions.

I find it somewhat difficult to reconcile these two situations and would be grateful for your explanation.

A44

Answer: Initially the Commission had taken the view that a Mayor could only exercise their individual choice if the Council elected to go with the new system. This was based on the premise that there was the possibility that under the new system a Mayor could receive less. As the Mayor had stood at the previous election with a knowledge of the remuneration payable for the position then it would not appear equitable for the Mayor to have to take a reduction on account of the Council electing to go with the new system. Clearly if the council elected the status quo this possibility could not happen and accordingly, there was no need to provide this choice. However after reconsidering the issue and in line with the previous answer to Question 8 the Commission will now permit the Mayor to make an individual choice irrespective of how the Council elects.

19. It is noted that you require the completed forms to be returned by 10 March 2003, however the District Council is unable to meet this timeframe and request an extension until Friday March 21st to enable time for Council to consider this matter at its 28th February meeting and then should Council resolve to move to the new basis from 1 July 2003, to allow time for the Community Boards to consider Council's recommended salaries.

Answer: Whilst the Commission can appreciate the points you make, we do not feel we can allow any slippage in the programme.

Our concern is that we will not be able to have the new system implemented by 1 July of this year and this could cause major problems for all concerned. If we agreed to your recommendations not being required until 21 March we would also have to give the same tolerance to every other council who so requested. In instances where the recommendations were unanimous and reasonable this would probably be easily handled in the timeframe. However, where there are any dissenting voices or where we considered the recommendations unreasonable, we would have to do further investigation which would clearly take time.

The programme is already quite tight as we have to consider all the recommendations, ask further questions where appropriate, make our final decisions, get each council and community board gazetted and still give councils time to have the new systems in place by 1 July 2003.

Please adhere to the timetable as set out. We would hope that the issue was important enough to warrant a special meeting if that is the only way.

20. As a chairperson of a community board I would very much appreciate the answer to some questions as our board will be debating this proposal shortly.

- 1- The assumption is that the Local Government member indicative remuneration pool is GST exclusive. I would appreciate that this is confirmed. The reason for the question is that at present our community board honorarium and meeting fee is paid by the ratepayers of our board area only and is rated on a GST basis.

A45

- 2- The definition of Statutory meetings to be paid outside of the indicative remuneration pool. Does this only cover resource consent application hearings? Are submission hearings (Annual Plan, District Plan, Strategic Plan etc) to be paid from the remuneration pool?
- 3- There is some confusion over how the remuneration package will be rated. It is my understanding that the remuneration pool package covers only how much an elected member is paid and NOT how the amount is rated and who pays. In the case of our community board, the community board area pays for its members' remuneration without contribution from the rest of the city. Can this continue?

Answer:

- 1- The Commission understands that remuneration paid to elected members of local bodies does not attract GST and accordingly we do not understand the question. If we are wrong could we please be informed urgently.
- 2- Our letter of 17 January 2003 covered this:

“In our letter dated 18 December 2002 advising all councils of their indicative pool of remuneration, we advised that ‘statutory hearing’ fees would be able to be paid to elected members outside of the indicative pool.

Our letter did not clarify what we considered to be statutory hearings for this purpose.

After further review we have decided that the only fees for statutory hearings that may be paid outside the indicative pool are resource consent application hearings arising under the Resource Management Act 1991.

In other words, any meeting fees paid to elected members in respect of all other hearings including --

- (a) hearings relating to the establishment and variations of a district/regional plan; and
- (b) other statutory hearings such as permit and bylaw application hearings, etc.,

are included in the indicative pool.

The fee allowable for resource consent applications hearings includes the time spent at the actual hearing, or deliberating as part of the joint hearings committee, but does not include time spent by a member in preparation or review of issues outside of the formal hearings.”

- 3- The Commission has no jurisdiction or involvement as to how the funds are raised to meet all or any local body costs. Assuming what is being done now is in order, then presumably it can continue if you and your Council so decide.

A46

21. Why are resource consent hearings outside the bulk fund but alteration of designation hearings are not? The exception of plan changes and variations seems to make these provisions unworkable, how will this be addressed? If outside Commissioners are used do they have to be paid out of the pool?

Answer: The Commission's rationale was that resource consent hearings are demand driven under a separate Act, in many instances the costs can be recovered from the applicants and the inclusion in the pool would provide a perverse incentive for councils to appoint independent Commissioners at what is likely to be a much greater cost to the applicant. Designation hearings are seen as an integral part of a council's business and as such, are included in the pool.

The cost of outside Commissioners does not count against the pool.

22. 1. Is the Chairperson of the Hearings Committee (which hears resource consent applications) still entitled to a Chairpersons salary or do they get \$60.00 per hour only?
2. Our community boards (4) have opted to receive only a % of their entitlement for salaries and meeting allowances. Each community board has a different %, for example one Community Board receives 20% salary and 100% of meeting allowance whereas another Community Board receives 10% of salary and 10% of meeting allowance. Were variations in the community board calculations considered in the remuneration formula, and if so, were they based on entitlements or actual payment? Can community boards have different levels? If community boards choose not to accept the full level of entitlement under the new system (whatever that may be) how would this effect the level of monies in the pool? For example if the decision was to increase chairpersons of Community Boards salaries, but the chairpersons refused the increase, would that difference be allocated elsewhere e.g. added to councillors remuneration?

Answer: 1. Yes. All elected members of Council except for the Mayor will receive the hourly rate for Resource Consent Hearings. The salary as Chair of the Hearings Committee will be payable in addition to reflect the other responsibilities of that role. We would expect the recommendation to the Commission to take this into account.

2. Community Boards can have different salary levels. However, once those levels are set the members must receive this pay. The answer to this question needs to be read in conjunction with our answer to question 15. This can be summarised by two examples. Firstly, if the Community Board agrees to take a lower salary and this is recommended to the Commission and accepted by it by way of its determination then effectively the balance falls back into the pool. On the other hand if the salary is set at a higher level and an individual member is paid that salary and then returns part or all of it to the Council, it does not go into the pool but into the Council's financial accounts.

The level of the pool was based on population, expenditure, assets and rate of change. Any past practices such as detailed above had no bearing on the size of the pool.

A47

23. Local Government NZ suggested that if a council decided NOT to take up the HSC option at this time, the CPI inflation would not be added to their "pool". Can you confirm this is the situation and when the first CPI would be effective - 1 July 2003 or 1 July 2004?

Answer: There has never been a suggestion that the pool will move in line with CPI. The Commission's intention is to review the remuneration of elected members (and consequently the pool) every year and provide a new indicative pool prior to Christmas. At the same time, we will review the system and possibly make changes. Especially in the early years the Commission will wish to consider how the system is working and whether changes should be made. When considering the new remuneration and indicative pool the Commission will take into account a number of factors including wage movement both inside and outside the public sector, the roles of elected members and whether those roles have altered due to the new Local Government Act 2002, etc.

For a council which decided to stay with the current system we would need to review the indicative pool although this would only apply after the next elections.

24. If the Mayor's salary is reduced to reflect private use of a vehicle, does that deduction return to the pool for allocation elsewhere?

Answer: No. As stated in the answer to Question 8, the amount to be debited to the pool on behalf of the Mayor will be the salary proposed under the new system irrespective of the Mayor's election or any deduction in respect of private usage of a car.

25. Mayoral Vehicle. Could a more definitive percentage be advised to Local Authorities with regards to the percentage deduction from the Mayor's salary for the use of a Council vehicle. The Mayoral vehicle does approximately 30,000km per year. The District Council is a very diverse area with 5 Community Boards and a distance of nearly two hours to travel from one end of the district to the other.

Answer: The Commission indicated a possible range between 12%-24% for private usage of the vehicle. In this case we would expect that the percentage would be at the lower end of the range. The Commission will determine this following any recommendations made by the Council.

26. If the Mayor elects not to take a car and goes onto the mileage regime, what are the rules surrounding claiming of mileage for attending meetings, ratepayers functions, civic duties etc? To give an indicative cost on the Mayor's current mileage, if he used his personal car and all Mayoral mileage was approved, the value given to His Worship would be approximately \$27,000 per year. This is based on the 70c per km in the Higher Salaries Commission determination. In the centralised urban city areas, there is less travel involved with regards to the Mayor. In a rural district that comprises of Community Boards over almost a 200km coastal settlement, there is considerable travel.

A48

Answer: The Council should determine what is most cost effective for ratepayers. In this instance, provision of a car for the Mayor is likely to result in less cost to the Council.

27. Council is also considering the issue of salary and/or salary/meeting allowance. One of the questions which has been addressed to me is "would it be possible for the Council to set a salary and that at the end of the year a "bonus system" applied whereby the Councillors could be given a pro-rata basis based on the number of meetings that the respective Councillor had attended.

Answer:

- (a) Page 4 of our 18 December 2002 paper stated:

"Meeting Fees

A council which wishes to retain meeting fees for its members needs to recommend the rate and basis upon which they should be paid. This basis does not need to be the same as the current basis, indeed the Commission believes that the current basis can create some real anomalies. The number of meetings in each year is by definition difficult to predict. At the end of a year a council which has not expended all that part of the pool put aside for meeting fees can request the Commission to carry forward in what will then be the current year up to 30% of the previous year's meeting fee budget."

- (b) The Commission must determine in advance the salaries. Councils can recommend salary differentials for those Councillors whose roles require a higher burden of responsibility or activity. This precludes the introduction of any bonus system.

28. Your advice is that co-opted members are not elected members and as such are not within the jurisdiction of the Commission. Does this also apply to their payment? Is the payment for co-opted members and/or sub committees/Maori forum payments to those members a part of the indicative pool where they are not elected members of this Council?

Answer: The Commission determines remuneration only for elected members and that remuneration comes out of the pool. Co-opted members who take part in any Council meetings of whatever nature are to be paid separately by Council. Their remuneration is not part of the pool.

29. A number of questions have arisen as to the level of meeting allowance that the Commission might consider as reasonable (or the level beyond which you would think as unreasonable). It might save a lot of effort if we could give some indication - I have been suggesting, on the basis of previous statements, that you consider the current level of daily meeting fees to be too high.

Answer: The Commission believes that each Council is in the best position to recommend what, if any, is the best level of fees for its members and in what circumstances they should be paid. At the end of the day they come out of the pool and are likely to be agreed to by the Commission unless they are clearly out of line. The Commission does not necessarily believe that the current level of daily meeting

fees was too high. Our concern was at the wide variation of conditions under which it was paid. In some instances a meeting might take less than an hour and the same fee was paid as compared with meetings that took all day.

30. Three issues about councillors who are community board members - normal in cities like Manukau (all councillors are also community board members) and Christchurch. Namely:

If a council decides to provide meeting fees, does a councillor who is also a community board member get a meeting fee for attending a community board meeting - and if so is this at the same level as if they were attending a council meeting?

Secondly - if they receive a meeting fee (remembering that community board members will be paid salaries) does that fee come from within the "pool" or is it seen as a "community board expense" with half the cost coming from outside the pool?

Thirdly (yes it really occurs) how do we handle the remuneration of a councillor who is a community board chair, if the remuneration for the chair is higher than that received by councillors. Is it the difference between her income as a councillor and that of a community board chair that comes out of the community board share?

Answer: The best way to answer this is to quote some of the basic principles of the current system, namely:

- A councillor by law cannot also be an elected member of a Community Board
- Only the salaries of ELECTED members of Community Boards is counted at half the amount when debiting to the pool
- Councils are asked to recommend to the Commission how their members should be remunerated. They may wish to recommend a salary as a councillor and a separate salary as a Community Board member. The Council may recommend that a councillor receives meeting fees and that attendance at a Community Board meeting qualifies for such a fee. The Council should recommend to the Commission what is the most appropriate way of remunerating their members recognising that the total amount of remuneration paid to councillors (excluding Resource Consent hearing fees) comes out of the pool.

Hutton Peacock

H D Peacock
Chairman

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HIGHER SALARIES COMMISSION

12 February 2003

To: All Mayors/Regional Council Chairs
All Elected Members (including Community Board members)
All Chief Executives

Please find attached a further set of questions and answers following on from our email of 4 February 2003. A number of questions concern Community Boards. PLEASE ENSURE that a copy is sent to each Community Board.

36. I am currently working on a briefing paper to go to Councillors regarding ER Remuneration and I have a query about the payment of RMA Hearings. A figure of \$60 per hour has been given for Councillors sitting on RMA Hearings. My question is whether this is a pro-rata payment, e.g., if the Councillor only sits for 15 minutes on an application, are they paid \$15?

Answer: The figure is intended to be \$60 per hour. Therefore if attendance is less, the fee should be pro-rated accordingly.

37. The mileage allowance as proposed, including an element per kilometre as compensation for travel time, seems appropriate and fair in all respects but one. Our councillors travel frequently between main centres. The opportunity exists and is often taken for private car-pooling. The councillor-driver will receive compensation for travel time, but it would seem that the councillor-passenger(s) will not. Can the travel time element of the mileage rate be specified and be claimed by the passenger(s)?

Answer: No. To attempt this would be very complicated viz tax status etc. Suggest you rotate drivers to achieve fairness!

38. If Council opts to stay with the present regime for remuneration, can they adopt the new mileage rate?

Answer: No. HSC general statement of principles dated 18 December 2002 (top of page 3) deals with this.

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39. Territorial Authorities will be initiating a representational review in 2003. With the greater flexibility offered to authorities under the new Local Government Act 2002 in respect of representation, there is likely to be enthusiasm for change. If changes occur, these may have a significant impact upon governance costs.

For example, a territorial authority may resolve (prior to 10 March 2003) to implement the new HSC framework from 1 July 2003. Thereafter, the representational review may lead to decisions that would affect the numbers of elected members within its district and its governance costs after the October/November 2004 local body elections.

- (a) Does the existing framework allow for a re-determination in these cases?
- (b) What arrangements will be in place to deal with the period between 1 July 2004 and the new triennium?

Answer: See previous answers to Questions 3 and 14.

40. HSC has the ability under the legislation to prescribe rules for the recovery of expenses. Nonetheless one option for a territorial authority is to resolve to continue with its present conditions of remuneration and expenses reimbursement until the date of the next local body elections. Presumably this means that the territorial authority may continue to use its existing rules only if the HSC determines they are appropriate?

Answer: Yes. The existing rules for remuneration and expenses should be forwarded to HSC for consideration and will be able to be retained so long as HSC approves them.

41. I'd like some clarification on the answer to Question 17, as it is not clear to me whether HSC's expectation is that a Councillor appointed to a Community Board is entitled to a Community Board salary and/or meeting allowances (AS WELL AS full remuneration for Council membership), and if so, whether 100% or 50% of the CB salary is drawn from the pool (although it appears to be the former).

Answer: An elected member can only receive one salary. The salary paid to this person should reflect the responsibilities of that person and as such the recommendations from the Council to the Commission could reflect this. The Councillor may also receive meeting fees for attending Community Board meetings if that is what is recommended to the Commission and approved by it. Only the salaries received by elected members of Community Boards counts at the rate of 50% in respect of the pool. Accordingly, the salary and any meeting fees received by this person will count 100% against the pool.

42. Several elected members have asked me to seek clarification from HSC on its definition of 'salary' since this has impact on their tax status, particularly in terms of ACC levies, PAYE, etc.

Answer: Elected members are self-employed for tax and other purposes. As such all payments are fully taxable (salary, meeting fees, expenses, mileage, etc). Claims can be made for recovery of legitimate expenses against your tax assessment. The use of the word "salary" does not affect your status as self-employed for tax purposes.

43. It is unclear to me from the response to Question 22 whether HSC's expectation is that the Chair of the (RC) Hearings Committee is entitled to Chair weighting and therefore a chair's salary from the pool. (The response "yes" to an "Is.. or..." question flummoxed me somewhat!)

Answer: The Chair of the Hearings Committee is paid a salary for that position which presumably includes many other hearings besides resource consent hearings. When he/she is chairing resource consent hearings for which a fee of \$60 per hour is payable then that fee is payable in addition. The Chair's ongoing salary is deducted from the pool.

44. At the time of the April 2002 proposal, there was provision for Community Board meeting allowances from the pool. As you know, that is no longer the case. It seems to me that, when building 'salary + meeting allowance' (for Councillors only) models, that the appropriate approach is to calculate the Community Board salaries first, since calculating Councillor remuneration first, including meeting allowances, can have the effect of reducing the pool available for CB salaries.

I realise that this effect can be mitigated by the value of the allowance, or the percentage split of salaries/meeting allowances, but believe that on principle, Councils should ensure that CB members' remuneration is not reduced by models that allocate Council meeting allowances from the pool before CB salaries are calculated.

Answer: Only 50% of the salaries of elected members of Community Boards are debited to the pool. HSC hopes that both Council and Community Board can agree on a reasonable split of the pool. However, if either party is unhappy with the recommendation HSC must hear from them and will ultimately determine an appropriate split.

45. If a Community Board member attends a Council meeting or sub-committee meeting at the Council's request do they get paid an extra fee?

Answer: Possibly. This may be reflected by recommending a higher salary for that person to take account of the additional responsibilities or if the Council pays meeting fees the rules may make allowance for the fee to be paid on such occasions. In the first instance, only half the salary will be debited to the pool whilst in the latter case the full amount will be debited. This is a slight anomaly which cannot be avoided.

46. One of our community board members is an elected member of two community boards. Would that member receive two salaries?

AND

Two of our councillors are also elected members of a community board – would they receive two salaries – one as a councillor and one as a community board member?

Answer: This is a transition problem as the new law prevents people from standing in more than one ward or one constituency or in more than one subdivision of a community. We are advised that it would appear as if there is an anomaly in that a person could stand and be elected to two community boards should one be adjacent to a ward and the other be a subdivision of a ward. It is doubtful that was intended and is likely to be very unusual. However, in our view if a person is elected to two community boards then they equate to two “jobs” and they should receive two salaries.

In relation to the issue of councillors who are community board members – this is covered in the answers already given – they currently get the councillor’s remuneration only. This situation will not exist after the 2004 elections.

47. I am a little confused by two statements in the memo regarding section 33 of the Local Electoral Amendment Act 2002, regarding dual membership of Council and Community Boards. The first instance, in response to Question 17, says that the Chair of a CB cannot remain as an elected member of Council. Later, in answer to Question 30, you note that this restriction on membership applies to any dually elected member. From my reading of the Act, it would appear the later of these two statements is correct, but in my view the restriction will only apply from the next triennial local body elections, since of course this restriction did not apply during the last elections, in 2001. Can you confirm?

Answer: Yes, the writer of the question is correct – the restriction on dual membership came into law in December 2002 and will take practical effect in the 2004 elections. This is one of a series of transitional issues involving people elected to both which will go away in 2004.



Hutton Peacock
Chairman

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HIGHER SALARIES COMMISSION

24 February 2003

To: All Mayors/Regional Council Chairs
All Elected Members (including Community Board members)
All Chief Executives

Please find attached a further set of questions and answers nos. 48 to 60 following on from our email of 12 February 2003. PLEASE ENSURE that a copy is sent to each Community Board.

48. Our Council has asked if they can set aside a pool to pay meeting allowances and to allocate these on a pro rata basis based on attendance "Before the end of each year".

Answer: Yes, so long as the pro rata basis is fair and equitable.

49. Our Mayor seeks clarification on the ruling that the value of the mayoral vehicle includes GST, which is recovered by the Council and yet the proportion of that GST which is deducted from his remuneration is not recoverable by him. He has asked "how do I recover the GST component?"

Answer: IRD advises that –
"Under section 51 of the GST Act 1985 ("the Act") GST registration is available only if a person carries on a "taxable activity". As a result of GST registration a registered person accounts to Inland Revenue ("IR") for GST he or she is liable to return ("output tax") and can claim from IR the GST paid on supplies received ("input tax").

In this case the Mayor is unable to claim any input tax as under section 6(3)(c)(iii) of the Act the term "taxable activity" shall not include, in relation to any person, -

*"Any engagement, occupation, or employment -
(iii) As a Chairman or member of any local authority or any statutory board, council, committee, or other body; or"*

As the Mayor in his/her position does not have a taxable activity GST registration is not available and input tax claims cannot be made."

ASS

50. Can the Council recommend one remuneration option now which reflects the current committee structure and following a review in May 2003, recommend another remuneration option based on whatever committee structure is resolved at that point? Would the HSC look favourably on a possible change so soon after the initial recommendation? The background to this question is that the Council is trialling a different committee system from November 2002 to May 2003, at the end of which time the Council will review the success or otherwise of the new system.

Answer: The Commission has the power to do this, but would be extremely reluctant to do so except in exceptional circumstances. In this case, because Council is in the middle of a process, you should advise HSC as soon as practicable before mid-June, of your decision on a permanent change to the system.

51. Is it possible to increase the level of the indicative pool, as the amount remaining after salaries (unchanged from current levels) are paid to the elected members may not be sufficient to fully fund the meeting costs? Is there a formal process for applying for an increase in the Indicative Pool, and if so, what is it?

Answer: No. Once the pool is expended no more remuneration may be paid. Councils will need to take this into account in making their recommendations to HSC.

52. (a) Although correspondence dated 15 January from Mike Reid made mention of the issue of the 'expenditure cap' with regard to meeting fees paid, how would a Council deal with the situation where meeting expenditures have been exhausted, but Council appoints one of its Councillors as 'Special Representative' to attend a conference or seminar dealing with issues affecting that Council? Can any exception be made? If so, how is it applied for to the HSC?
- (b) Must the Council reserve funds 'just-in-case' this situation arrives, and then if unexpended in the current year, apply for a 'carry-over' to the next year (as part of the allowable 30% carry-over)?

Answer:

- (a) See answer to question 51. Otherwise where a Councillor attends a meeting as a special representative and this is covered in the rules, a meeting fee is payable so long as it is within the allowable pool.
- (b) If all meeting fees are not expended you may apply to HSC to carry over a proportion to the next year. See Question 27(a).

53. (a) Would you have any idea of the date of release of the HSC expenses determination? To a degree, it will have a financial effect on the overall cost of changing to the new HSC remuneration basis, which will come into effect from 1 July 2003. In performing cost analyses it would be helpful to have some sort of indication of what the new HSC expense determination will look like, (i.e., allowable costs, level of costs, expenditure caps, etc.)

Answer: It is proposed that the rules for expenses will be issued prior to 1 July 2003 as part of the determination. Each council is responsible for recommending an expense regime and rules which best suit its operations and keeps overall cost to the ratepayer within bounds. Provided there are no IRD or Audit issues and the caps, rates and rules seem reasonable HSC will almost certainly determine that way.

53. (b) I assume that if council recommends the status quo to HSC, the mileage expense, statutory meeting fees, etc., will also remain the same as they are now until the next election when the new HSC basis takes force anyway.

Answer: Yes. If council maintains the status quo it applies to remuneration and all other expenses.

54. My understanding is that under section 357 of the Resource Management Act 1991, someone who has made a resource consent application has the right to object to a local authority in respect of a requirement to pay a fee.
- (a) Is time spent by elected members considering that objection (objection to fees hearing) included within the definition of resource consent application hearings?
- (b) As such can the elected members receive statutory hearing fees while sitting as members of that hearing?

Answer: (a) Yes. In effect it is an extension of the hearing.
(b) Yes.

55. (a) Is it the intention of the Commission that each member of a statutory hearings committee would be entitled to be paid \$60 (or whatever the final figure is) per hour of the hearing including time spent on deliberations?

As an example: in the calendar year 2002 this Council's RMA hearings committee spent 89 hours hearing RMA applications...this was the total hours of all the hearings...these were spent over some 23 days which equates to approx. 4 hours per day average...with 6 members generally in attendance this further equates to 24 chargeable hours per day or a total of \$1440 per day (c/f \$780 under the current regime)

Answer: Yes, but only in respect of elected members. See Question 36. If attendance is less than an hour the \$60 is pro-rated accordingly.

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55. (b) Is it the opinion of the Commission that the total cost of the remuneration would be recoverable from the applicant?

Answer: Section 36 of the Resource Management Act covers the administrative charges that can be levied. S.36(2) sets out how the charges may be made. HSC has no role in determining this; it is the prerogative of the Local Authority.

56. The council would prefer to make the transition to the new regime with effect from 1 July 2004. This would allow additional time to fully explore how best to allocate the pool of available funds and budget accordingly in the Annual Plan 2004/5.

Answer: The Commission has no objection to this course of action. (See also answers 3 and 14).

SOME OTHER ISSUES RAISED WITH THE COMMISSION

57. **Proposition:** Council wishes to take less than the pool.

Response: No, because HSC wishes to depoliticise the process and to avoid embarrassment for members who may want or need this level of remuneration. However, if individual members or the council feel strongly there is no objection to their receiving the remuneration and, after paying tax on it, returning the balance to the council.

58. **Proposition:** Councillors are paid a salary only and do not attend meetings or only part of meetings. This places an unfair burden on other councillors. How would HSC deal with this?

Response: HSC is loathe to impose a rule because each councils' circumstances are so different. However, if any council feels strongly that there should be some sanction then they should feel free to propose a solution to the HSC for consideration.

59. **Proposition: Re: Community Boards.** Where there is a dispute between the council and its Community Boards over the relative rates of pay for recommendation to the Commission, what happens?

Response: All parties should put their views in writing to the Commission. The Commission may refer those views to the LGNZ and to the New Zealand Community Boards' Executive Committee to obtain their comments. The Commission is also likely to ask parties for further input before making a determination.

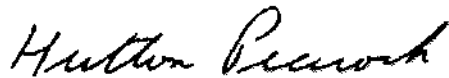
NB: It is important to remember that it is the HSC which will determine the level of salary for the Community Boards.

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60. **Proposition:** The council wishes to retain the status quo but the Mayor elects to move on to the new system OR the council opts for the new system but the Mayor (where it is likely he/she will suffer a drop in salary) wants to remain on the current basis, what happens?

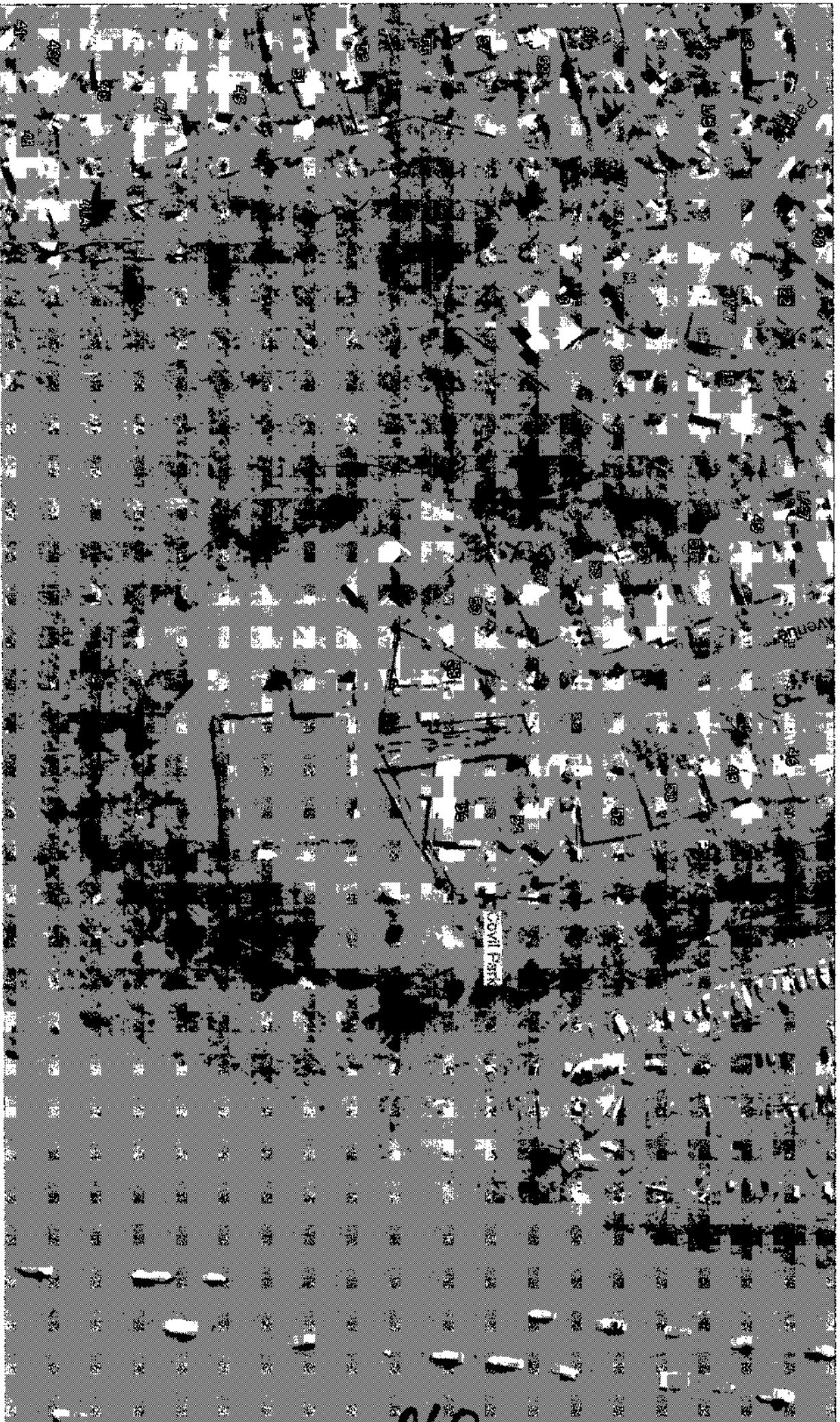
Response: In either case the Mayor is able to make an independent election. She/he is independently elected and may make an individual choice. **See Question 18.**

We have seen press reports indicating that at least one council has "ruled" the Mayor's preferred option out of order. **Councils have no power to do this. HSC is the only body empowered to make a decision on the Mayor's salary having heard from him/her as to their preferred option.**



Hutton Peacock
Chairman

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