

# **Governance Structures for Wellington Zoo**

***A REPORT PREPARED FOR  
THE WELLINGTON CITY COUNCIL  
BY  
MCKINLAY DOUGLAS LIMITED***

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# GOVERNANCE STRUCTURES FOR WELLINGTON ZOO

## INTRODUCTION

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This report has been commissioned by the Wellington City Council (“the Council”) from McKinlay Douglas Limited (“MDL”). The report is to recommend:

- ▶ The most appropriate governance structure for the Zoo.
- ▶ What Council’s role should be in the delivery of the zoo service.

In preparing the report, the brief requires that MDL:

- ▶ Scope a wide range of possible options.
- ▶ Recommend which governance option will provide the best outcome for Council and the Zoo, taking at least the following in to account:
  - Efficiency and transparency of decision making.
  - Level of ongoing political involvement in terms of funding and direction/objective setting.
  - Risk management.
  - Entrepreneurial potential.
  - Potential for sponsors and business partners.
  - Other relevant factors.

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## **BACKGROUND**

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The Zoo currently operates as a Council business unit, reporting to the Community, Health and Recreation Committee of Council. Employees are Council employees and all assets and liabilities are assets and liabilities of the Council.

A 1996 Core Services Review concluded that *"While the Zoo does not fulfil all the requirements of the definition of a core service, there may be valid reasons for Council to continue its interest in the Zoo"*. It advanced as arguments for continuing Council involvement in the Zoo:

- ▶ Community expectation.
- ▶ Fairness.
- ▶ The development of a tourist opportunity.
- ▶ The potential for new relationships.
- ▶ Enhancement of the city's strategic objectives.

For this report, neither closure nor privatisation (that is sale to a for profit third party) are considered. The basic assumption is that the Council will continue to be involved with the Zoo (including as a funder). The question is how.

There are five key factors that set the context for this report. They are:

- ▶ The Zoo's status within Council.
- ▶ Town belt.
- ▶ Public attitudes.
- ▶ Strategic Direction.
- ▶ Redevelopment.

### **Status**

The Zoo is not considered by the Council to be a core service, that is a service that the Council has either a statutory obligation to provide or that is of such central importance to its community that it has virtually no option but to continue itself providing the service. Instead, it is seen by the Council as a discretionary service in the sense that:

- ▶ It has discretion in how and by whom the service is provided.
- ▶ The Zoo's claim on Council funding is a lesser priority than services that qualify as core – thus placing a higher priority on seeking alternative funding sources.

### **Town Belt**

The Zoo is on town belt land. The significance of this is that:

- ▶ The Council cannot sell or transfer the Zoo land to a third party, even if that third party is a Council-controlled trust or other entity.
- ▶ If the Council leases the land to a third party, Council-controlled or otherwise, the maximum admission fee that party could charge for entrance to the Zoo is 10 cents (a limit set in the Wellington (City) Town Belt Reserves Act 1908).

The practical implication for the Council is that it could not transfer or lease land to any third party governance structure. Instead, if it decided to opt for a third party governance structure, that would need to be achieved through a long term management contract with the Council remaining the owner and legal occupier of the Zoo. Accordingly, throughout this report references to a possible transfer of the Zoo from the Council to another entity contemplate a situation in which:

- ▶ The Council enters into a long-term management contract with that entity.
- ▶ Significant Zoo assets, other than the land itself, are transferred to that entity under the terms of the management contract and that entity assumes responsibility for Zoo assets and liabilities and for employment of Zoo staff.

## **Public Attitudes**

Public attitudes towards the operation of zoos is changing markedly. There is a distinct shift from the traditional role of zoos as places where animals were kept for entertainment or educational purposes to an emphasis on conservation. Most zoos have responded to this by shifting their focus to conservation of endangered species – both exotic and domestic. Although (or perhaps because) this shift has been quite widespread, there is a clear measure of scepticism about how genuine it is – whether zoos have been adopting a conservation focus because of a genuine commitment to conservation or whether they have been adopting that focus as a survival strategy in the face of changing public attitudes.

## **Strategic Direction**

It is considered by Council that the Zoo lacks a sense of strategic direction – a natural consequence of the fact that no decisions have yet been taken following the 1996 Core Services Review. Without a clear sense of strategic direction it will be difficult for whoever has responsibility for Zoo governance (whether the Council or another entity) to plan future developments and determine what the focus of Zoo activities should be. Accordingly the first priority of whatever governance structure the Council adopts following this report should be agreeing a vision and strategic direction for the Zoo together with the related strategies and means for implementation.

## **Redevelopment**

It is acknowledged that the Zoo requires substantial expenditure on redevelopment – specific new facilities such as an animal hospital and a nocturnal house (due for completion in December this year) have been mentioned, together with investment in upgrading/modernising displays and facilities generally. Provision of \$250,000 per annum

for capital expenditure has been incorporated in the Council's long term financial strategy (except for the 2002/2003 year for which \$450,000 has been provided). Once detailed plans have been completed it is possible that the order of magnitude involved could be as much as \$10 million over the next 10-15 years. In this regard it needs to be recalled that the Zoo will be 100 years old in 2006, and was established on its current site in 1907, so that the need for substantial reinvestment should not be surprising.

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## METHOD OF APPROACH

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The approach that we have adopted, and the methods we have used in preparing this report, include:

- Scoping New Zealand and international research and writings on governance in order to select an appropriate definition of the role and responsibilities of governance to provide a framework for assessing the options available to the Wellington City Council. We saw this first step as essential as the term 'governance' is interpreted in a number of different ways, quite often with a strong private sector for profit emphasis not appropriate for an activity such as the Zoo with its overriding 'public purpose' focus.
- Interviewing a range of people associated with the operation of the Wellington Zoo including the Mayor, the Chairperson of the Community, Health and Recreation Committee of Council, senior Council staff, the President of the Wellington Zoological Society, and the Zoo Manager.
- Interviewing (in person or by telephone/email) a range of other key informants identified primarily from the interviews referred to in the previous bullet, including representatives of the Karori Wildlife Sanctuary Trust, the Department of Conservation, and Landcare Research.
- Speaking with key individuals involved with the management of both the Hamilton and Auckland Zoos<sup>1</sup>.
- Undertaking a selective review of international sources dealing with zoo management and governance, the changing role of zoos and of public attitudes towards conservation and animal rights.
- Drawing on our experience from previous projects advising on governance within the local authority sector in New Zealand including a review for the Auckland City Council of the governance of the Auckland Zoo and advice to Local Government New Zealand (and the Wellington City Council) on the policy implications of the council-controlled organisation provisions in the Local Government Bill.

The remainder of this report:

- Discusses the nature of governance and the requirements for 'good governance' of the Zoo.
- Reviews possible options for a Zoo governance structure.
- Provides our recommendations on a preferred structure.
- Makes recommendations on implementation.

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<sup>1</sup> By way of background, the Appendix to this report includes an outline of the governance of the Auckland and Hamilton zoos and brief background to that.



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## GOVERNANCE

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In this section we consider first reasons for undertaking a review of Zoo governance and then the selection of principles of 'good governance' against which to assess possible options.

### Reasons

In 2001 the Council initiated a full Strategic Review of the Zoo which was mandated to consider the Zoo's strategic direction, objectives, outputs and governance structure. Consideration of governance has been given priority over the other elements of the Strategic Review as the decision on governance will determine the context (and responsibility) for the other elements of the review.

The Strategic Review follows on from a Core Services Review undertaken in 1996. Its conclusions included:

- ▶ For the Zoo's potential to be realised, the business of the Zoo needed to be re-focused; this involves a redefinition of the product, identifying its customers and their requirements, and an appropriate marketing strategy: a capital development and investment plan put in place: synergies with other city developments, e.g., MONZ, Capital Discovery Place and Karori Wildlife Sanctuary, explored.
- ▶ The present governance arrangements are not conducive to the Zoo developing its potential. As a business unit within the Council, the Zoo has to compete with other larger (and core) services and is tied to the Council's annual planning and funding cycle. It cannot independently source capital, and is constrained in its ability to win corporate sponsorship or access grant money. Wellington Zoo would be in a better position and be more customer focused if it were able to act more entrepreneurially.

The interviews and research undertaken for this project, and findings from a similar project undertaken by us in 2001 in respect of the Auckland Zoo, bear out several of the points made in the Core Services Review. First, there is a perceived mismatch between the Council's annual planning and accountability cycle and the often multi-year planning and implementation involved in (say) developing a major new exhibit.

Secondly, it can be difficult for a relatively peripheral activity to get the priority it needs when it is competing with a number of other and more significant activities for scarce governance time. The 5-year gap between completing the Core Services Review and commencing the Strategic Review would seem to illustrate this.

Thirdly, there are funding sources that will not support activities that are directly council owned (the Community Trust of Wellington is one).

Fourthly, many individuals – and corporates – are reluctant to directly fund or enter into partnerships with council activities. The reasons given will typically include a reluctance to deal with a political organisation, the complexity of council decision making processes and

the difficulty of ensuring long term stability (because of the potential for marked policy change following elections).

Obviously this last point is not universal. Corporates and individuals do support councils, sometimes quite significantly. The essence of this point is that there is good reason to believe that there are a number who will not support activities that are directly council-owned, thus making increased access to non-ratepayer support one factor in assessing different options.

Another factor to consider is how best to reflect in the Council's dealings with the Zoo the inevitably political dimension of decision making. Today Zoos are at the center of very real and occasionally passionate differences over their role with a number of people either taking the view that it is no longer acceptable to keep animals in captivity or campaigning for much tighter legislative and other controls than currently exist (for an example of the latter see the website of Zoocheck New Zealand [homepages.ihug.co.nz/~gatland/zoocheck.htm](http://homepages.ihug.co.nz/~gatland/zoocheck.htm) ).

Wellington Zoo has the added complication of being on Town Belt land, thus introducing the further dimension of the debate over whether this is a suitable site or a violation of the purpose for which the Town Belt was set aside.

The risk for the Council is that if it holds the governance role directly, and one or more councillors strongly hold the views just discussed, debate may not get past the emotional/political level to questions of Zoo strategy, direction, development, marketing etc. In contrast, if governance is vested in a non-council structure which itself has responsibility for developing strategic and business plans for approval by the Council (or discussion if a lesser level of involvement is seen as appropriate), then the presence of strong views on Council is much less of a barrier to making decisions.

This is not to suggest that the Council should be excluded from ensuring that the Zoo operation complies with its requirements – to the contrary, the funding/performance agreement/strategic and business plan approach should give it a much better focus than it is likely to have with a business unit. What a separate governance structure does do is provide a better framework for reflecting majority views rather than being diverted by minority but strongly held views.

## **Principles of 'Good Governance'**

It is useful in a report of this type to spell out what is meant by the term 'governance'. Most descriptions of governance rely heavily on the extensive research and literature on corporate governance in the commercial sector – in other words, governance of organisations whose principal objective is maximising shareholder wealth.

For the purposes of this report we instead adopt a description of governance developed in a report prepared for the Canadian Institute on Governance in the Voluntary and Not For

Profit Sector in Canada<sup>2</sup>. That report describes good governance as about:

- ▶ Vision – planning for the future.
- ▶ Destination – setting goals and providing a general ‘road map’.
- ▶ Resources – securing the resources necessary to achieve the goals or reach the destination.
- ▶ Monitoring – periodically ensuring that the organisational vehicle is well maintained and progressing, within legal limits, towards its destination.
- ▶ Accountability – ensuring efficient use of resources; reporting progress and detours to stakeholders.

Drawing on the sources outlined in the section on Method of Approach, we now set out under each of the five components of governance the matters that the future governance arrangements for the Zoo should be designed to deal with.

## **VISION**

Zoos operate in a complex and rapidly changing environment:

- ▶ Public attitudes on animal rights are shifting markedly. Keeping animals in captivity for public entertainment is becoming unacceptable. Zoos now increasingly seek their rationale through the contribution they make to the conservation of exotic and native fauna.
- ▶ Changing expectations about minimum standards for zoo planning and operation, behavioural needs, nutrition, physical environment, management practices, health care and record keeping are raising both the cost of operation and the skills required of staff<sup>3</sup>.
- ▶ Public expectations of ‘value for money’ from expenditure on entertainment are rising driven by the variety of options on offer.
- ▶ Establishing the long term vision for an undertaking that needs, at one and the same time, to satisfy animal rights, conservation, entertainment and education demands means managing potentially conflicting objectives in a sensitive environment.
- ▶ Most publicly owned zoos have a principal funder whose own ability to fund faces increasing demands from competing, often higher priority, demands.
- ▶ Specifically, for Wellington Zoo, developing a long term vision needs to deal both with the fact of its location on town belt land, and with the emergence of the Karori Wildlife Sanctuary Trust as a potentially major competitor in securing support for conservation activity (or alternatively, as a major complementary facility).

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<sup>2</sup> Gill, M (2001) “*Governance Dos and Don’ts: Lessons From Case Studies on 20 Canadian Non-Profits*”, [www.oog.ca](http://www.oog.ca). That report was produced as part of a larger project intended to “*Strengthen governance capacity in voluntary/non profit organisations*”. The report describes the purpose of that report as to “*Explore the relationship between good governance and organisational effectiveness*” and to “*Consider factors such as variations in ownership structure, accountability requirements, organisational size, decision making processes, critical transitional phases, the degree of latitude a board has in setting its mandate, and organisational stability and adaptability*”. The researchers also intended to develop a new conceptual framework that will help boards and executive directors better understand what kinds of governance policies and practices might be best suited to their particular organisation.

<sup>3</sup> See the Code of Ethics of the World Association of Zoos and Aquariums, [www.waza.org](http://www.waza.org).

## **DESTINATION**

This component of good governance is the preparation and implementation of a strategic plan to realise the vision. It will require optimising a number of potentially competing components that the vision itself is likely to encompass. These will include:

- ▶ The Zoo's role as an entertainment facility (recognised in the Council's annual plan by its inclusion within the Recreation and Leisure Key Achievement Area).
- ▶ Cementing the Zoo's position as a key element in the conservation of endangered species – both exotic and domestic. (Exotic as this is effectively a precondition for the Zoo being able to: access exotic animals, whether as replacements or as new species; retain/build on collegial relationships with other zoos; manage public concerns over animal rights issues. Domestic as New Zealand has one of the highest numbers of endangered species of any country.)
- ▶ Creating the physical facilities and long term relationships needed to build/sustain sponsor support.
- ▶ Building the Zoo's support base through instruments such as the Zoological Society.
- ▶ Developing through the Council itself the support needed for a long term funding/development plan.
- ▶ Putting in place and implementing a development plan for the Zoo which is achievable (in both financial and other terms) and supportive of the Zoo's long term vision.

## **RESOURCES**

The Zoo will be caught between an increasing demand for resources, both for capital investment and operations, and a limited ability on the part of the City Council to fund its requirements. Good governance requirements will include identifying/accessing alternative sources of funding. These will include the ability to ensure those are seen as complementary rather than conflicting in their impact on the Zoo's values and vision as additional resources will need to come from:

- ▶ Increased attendance (both fees and numbers).
- ▶ Restaurant/retail facilities.
- ▶ The philanthropic sector (which includes various public and private trusts).
- ▶ Individual supporters.
- ▶ Corporate sponsorship, which is increasingly undertaken on a 'value for money' basis.
- ▶ A long term funding path from the Council which will undoubtedly be subject to achieving agreed milestones.

## **MONITORING**

This is the classic corporate governance responsibility of monitoring the performance of the Chief Executive and staff and ensuring that the organisation has in place the practices and policies required to implement agreed strategies. It includes the ability to:

- ▶ Assess the quality of strategy and performance across a wide range of activity (from conservation to development (both facilities and staff) to marketing and managing long term relationships with corporate sponsors).
- ▶ Ensuring that the organisation has in place appropriate risk management strategies (financial, environmental, animal health, public attitudes).

## **ACCOUNTABILITY**

The Zoo will have a multitude of different accountability relationships to manage. Although day to day operation will be the responsibility of the Zoo management and staff, policy, performance monitoring and accountability, and representing the Zoo to key stakeholders will be primarily the role of the governance body. Accountability will include:

- ▶ Providing the City Council with the information it requires to meet its own accountability requirements under the Local Government Act.
- ▶ Agreeing with the City Council the nature and content of accountability instruments and ensuring that their requirements are satisfied.
- ▶ Meeting the formal and informal accountability requirements of key stakeholders such as:
  - Conservation agencies.
  - Agencies with an interest in animal welfare.
  - The Zoo community.
  - The Wellington public.
  - Other stakeholders with an interest in the impact that the Zoo's performance has on achieving their outcomes (for example, Totally Wellington).

## **Summary**

The requirements outlined under the five different heads of good governance, and drawn from key informants and selected research, point to the need for a high performing governance body with a diverse range of skills and experience. Requirements will include:

- ▶ Strong but inclusive leadership.
- ▶ An ability to develop long term positive relationships with stakeholders from diverse interests – ranging from animal rights and conservation interests to major business sponsors.
- ▶ High level strategic skills.
- ▶ An ability to develop and implement the strategies necessary to realise the vision (likely to require lateral rather than linear thinking).
- ▶ Excellent entrepreneurial skills (the entertainment/corporate facility aspects of the future Zoo business will be functioning in a very competitive market).
- ▶ Sound basic skills of good corporate governance, ensuring that the Zoo's operational and capital development plans are well developed, practical, cost effective, and implemented against agreed deadlines.
- ▶ An understanding of risk management.

- ▶ The ability to move easily between and understand the different requirements of the public, private and voluntary/community sectors (each of which will be imposing its own demands on the Zoo and expecting its governance body to understand and respond positively to those demands).
- ▶ A sensitivity to the interests of tangata whenua.

This is not a requirement that each member of the Board have all of those skills, relevant experience and attributes. Rather, it is a requirement that the Board as a whole does<sup>4</sup>.

Against that background we comment briefly on how the present governance of the Zoo appears to measure up under each of the five 'good governance' principles.

## **VISION**

It is six years since the Core Services Review was completed with its questions about the Zoo's future direction and governance. While there has been some practical improvement since then (eg, development of the nocturnal house to be completed in December), there appears to have been no significant progress on developing a vision for the future role and function of the Zoo. This suggests that, at least on this principle, there is some inherent defect in the present governance structure.

## **DESTINATION**

The Zoo has made measurable progress in specific areas, such as redevelopment and conservation (working with Victoria University on the Tuatara sex determination project). However, it has clearly been inhibited by the lack of a coherent vision. From a governance perspective, although vision and destination are logically separate elements, the latter is so dependent on the former that any weakness in vision is inevitably a weakness in destination.

For both of these, being directly embedded in the Council's statutory reporting and accountability processes is potentially a strength but in practice almost a weakness. The framework is potentially a strength because of the detailed requirements for public accountability and involvement. However because the focus is on the accountability of the Council as a whole inevitably the amount of attention that can be paid to the Zoo is relatively limited (the financial and other information in this year's draft annual plan is very minimal – and necessarily so because of the range of activities the Council must report on). The reporting requirements – and timetable – for a separate entity could well produce greater information for and involvement by the interested public, especially as they would know that they were dealing with an entity whose sole responsibility was the Zoo itself.

## **RESOURCES**

As a Council business unit the Zoo does some have some real advantages. As examples:

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<sup>4</sup> Wheeler, B (2001) "Review of Identification and Screening Criteria Used by the Crown Company Monitoring Advisory Unit", a report prepared independently through a contract let by the Crown Company Monitoring Advisory Unit.

- ▶ It can draw on the support resources of the Council on matters such as accounting, tax advice, human resources, property management, legal services, insurance (given the nature of the Council's insurance arrangements, it effectively self insures as far as the Zoo is concerned) and much more.
- ▶ Its core funding requirements are automatically seen as an ongoing council obligation.

On the other hand it does appear to be limited in other important ways such as:

- ▶ Full access to the potential of corporate and other non-Council support.
- ▶ Entrepreneurial skills – in areas such as exploiting the Zoo's potential to generate income from ancillary activities such as restaurant and retail and corporate functions.
- ▶ Access to focused governance input both regularly and on an 'as required' basis as it is just one of a number of activities the responsibility of the Community, Health and Recreation Committee.

## **MONITORING AND ACCOUNTABILITY**

Financial monitoring and accountability should be strong reflecting the systems that the Council has in place for all its business units. An alternative governance structure would need to put its own systems in place, including systems that provided for reporting to Council so long as it was still a funder. In practice this should not be a major difficulty for a competent governance body – as one option, it might 'piggyback' on the systems established by the Wellington Museums Trust.

It is less clear how well the present governance arrangements serve other monitoring and accountability requirements (demands). We have already commented on the problems arising from the fact that the principal means for the Zoo to account to the public is through the Council's own documents. In an ideal world it is likely that the Zoo's core constituency would want accountability specific to its needs – and that doing this might in turn lead to a higher level of public support.

The next section of this report describes the different possible options for future governance and assesses the ability of each to deliver on the identified governance requirements.

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## **SELECTING A GOVERNANCE STRUCTURE**

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This section examines a number of possible governance structures. For ease of discussion they are grouped into three separate categories:

1. Local authority ownership and management (options include Wellington City, a joint committee of Wellington plus other territorial local authorities within the region; the Wellington Regional Council).
2. A fully commercial model.
3. Trust ownership.

The first option in category one involves continuing direct Council ownership and control of the Zoo. The second would involve continuing Council ownership but shared control (joint committees have no power to hold property). Under both these options Zoo assets and liabilities would remain as Council assets and liabilities and staff as Council employees. The third option and each of the other categories shifts legal ownership – and the employment relationship – away from the Council to another entity even though that entity may remain Council controlled.

This goes directly to one of the issues this report is required to consider, what Council's role should be in the delivery of the Zoo service. The stance this report takes is that the Council's concern should be with outcomes rather than with outputs as such (although obviously in negotiating funding and approving/negotiating a business plan the Council would want to be satisfied that the Zoo's intended outputs should indeed give rise to the outcomes the Council seeks).

### **The Council's Role in the Zoo Service**

Two issues arise with all models under which ownership and management would shift from the Council to another entity (that is with all models except the first two options in category one):

- ▶ Will Council feel that it has sufficient influence over the Zoo if it is not the direct owner – what should its role be in the delivery of the Zoo service?
- ▶ If Council ownership is indirect, will it lose commitment?

With the exception of the Regional Council option, the answer to each of these questions is very much a function of the quality of Council process in establishing a suitable funding/performance agreement with the Zoo's governance body. This report assumes that under the Regional Council ownership funding would be through a regional rate so that the City would not be able to use a funding/performance agreement to influence outcomes. (It might be able to do so through a management agreement if that were the means of transferring control because of the Town Belt problem but that is unlikely to be a very effective instrument as the Regional Council could be expected to want a substantial measure of autonomy in policy and operation as a condition of assuming the role).



Generally, so long as it is the major or a significant funder, Council can exercise more effective control where ownership is indirect (or even non-existent) than direct. The reason is simple. Where ownership is indirect or non-existent, and the Council is a major funder, best practice should see the Council making its funding the subject of a funding/performance agreement<sup>5</sup> which includes requirements that the recipient:

- ▶ Prepare a business plan and strategic plan for approval by (or in negotiation with) the Council.
- ▶ Identify the deliverables that will be produced with the Council's funding and the outcomes to which those will contribute.
- ▶ Specify milestones.
- ▶ Set out accountability requirements, including performance.

An important factor is the nature of the relationship between the governance structure and the Council. If the Council wants efficiency and transparency (the first of the criteria it set for Zoo governance in the terms of reference for this report) then it needs to take account of the impact of different structures. Under direct council ownership/management, accountability for performance in the governance role is to the very body responsible for governance – the council committee and through it the Council itself. There is a likelihood that monitoring the effectiveness of governance will be inhibited by this. It may also be difficult for the Council to impose clear and enforceable expectations, and to impose sanctions for non-performance. In contrast, if the principal relationship is through a funding/performance agreement, and that is well specified, there is likely to be a much more specific focus on performance and on what happens in the event of non-performance.

To sum up, it is our judgement that a specifically outcome focus, supported by a performance based contract, will provide a much more effective means for Council securing what it wants from the Zoo service than it will get by delivering the service itself, provided the Council ensures it has good advice when negotiating with the future governance structure, and the funding/performance agreement and other documents of accountability are well specified.

The risk that a council might be less attached to funding an activity once it was placed in an arms length entity does exist. Ways of minimising this include:

- ▶ Basing funding commitments on a rolling three year period rather than year by year.
- ▶ Making indicative provision in the long term financial strategy (or long term council community plan).

In practice, a Council is not a free agent on matters of this sort. Public opinion, and Council reputation (especially if significant external sponsors have become involved on an understanding of the Council's future commitment) act as very real constraints. Also, Council's decision making – and ability to maintain long term funding arrangements unless these are embedded in contract – will be influenced both by public consultation through the annual planning round and by the outcomes of the electoral cycle.

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<sup>5</sup> A very useful checklist is set out in Appendix B of the Controller and Auditor-General's report on Local Authority Governance of Subsidiary Entities. The principles should be applied regardless of whether or not the Council has formal control of the future governance structure so long as it remains a principal funder.

Finally, the same ability to reduce funding – arbitrarily or otherwise – exists with activities that are in direct Council ownership.

## **A Sectoral Or National Approach**

Opening up consideration of different governance options almost inevitably raises questions not just about the Zoo itself but how it relates to other organisations or groups with related or complementary interests. A number of informants identified opportunities for closer working relationships between the Zoo and other zoos and/or conservation organisations. All recognised that the Zoo already has existing working relationships with other zoos (both Auckland as an individual zoo and the Australasian Regional Association of Zoological Parks and Aquaria), with research entities (Victoria University, both generally and through the Tuatara Programme) and the Department of Conservation.

A number argued that there was very real potential for benefit from closer relationships – perhaps to the extent of being under a single umbrella organisation – for reasons such as:

- ▶ Allowing for better focus/specialisation amongst zoos within New Zealand.
- ▶ Professional development of zoo staff including building a better career structure.
- ▶ The opportunity for greater specialisation in conservation activity (Landcare Research cited as a good model the relationship between the Perth Zoo and the Western Australia State Department of Conservation and Land Management (CALM), with the Zoo involved in breeding endangered species and CALM placing them back into the wild in areas where predator control has been carried out).

Another possibility raised was for some form of closer relationship between the Zoo and the Karori Wildlife Sanctuary Trust, pointing out that both had significant support from the Council and that both shared a commitment to conservation, education and visitor attraction (although not necessarily from the same perspective).

Each of those are obviously matters of long term strategy (informants referred to the need to deal with 'patch protection' and different organisational cultures). They also depend very much on the governance matters of Vision and Destination being agreed so that there is a clear sense of the Zoo's long-term direction and priorities. Accordingly, their resolution depends on first putting in place a preferred governance structure for Wellington Zoo. Their current relevance lies in highlighting the potential relationships the Zoo could achieve and thus the types of issues a future governance structure would need to address.

The three categories are now considered.

### **Category 1 • Council Ownership and Management**

Within this category there are two approaches to consider: a solely Wellington City one and a regional one.

## **WELLINGTON CITY**

There are two options available within this approach. They are:

- ▶ The status quo, under which the Zoo is a Council business unit reporting to a Council committee (the Community, Health and Recreation Committee).
- ▶ An enhanced status quo. The Zoo still operates as a Council business unit but its governance is in the hands of a separately constituted management board (legally constituted as a committee or subcommittee of the Council but made up entirely or substantially of appointed members selected for their relevant skills and experience). It may have substantial delegated authority to manage the business and enter arrangements with third parties.

### **Status Quo**

The principal attraction of the status quo option is that it preserves the Zoo as part of a suite of Council facilities. It appeals to the 'ownership' dimension still strong in much of local government. Since the Zoo is on town belt land, this may have real importance for at least some residents and ratepayers.

Compared against the governance requirements outlined above, status quo does not perform well. Thus:

- ▶ Experience suggests that this structure lacks strong and focused leadership – which needs to come from governance not management. This is not a comment on the capability of the individuals who have made up the committee over the years. Rather it is a function of vesting governance in a Council committee with a multiplicity of responsibilities. If the Zoo were reporting to a committee that had responsibility only for the Zoo, the situation might be different but this does not seem to be a practical option for a committee made up of councillors – the implication is that every council facility or activity of any significance should have its own committee, which is clearly not a realistic option.
- ▶ Vision setting, strategy development, planning and implementation lack flexibility – or are caught up in Local Government Act processes. This can be a potentially major negative when dealing with third parties, especially on commercial matters. (It is less significant that the Council's own funding, through a purchase agreement, is inevitably caught up in those processes.)
- ▶ Liabilities, such as responsibility under any major sponsoring, joint venture or other third party arrangements, remain Council liabilities, thus limiting the discretion of those most directly involved in management and involving the Council itself in any third party negotiations.
- ▶ There is evidence that some potential sponsors, from the commercial sector, are less comfortable dealing with council-controlled entities than with entities with their own independent governance. (This is partly a reaction to the inherently political nature of council decision making and partly the mismatch between commercial decision making processes and local authority ones.)

## **Enhanced Status Quo**

Under this approach, responsibility for the Zoo would shift from a Council committee to a management board (technically still a Council committee or subcommittee) all or a majority of whose members were appointed because of the specific skills, experience, and qualifications that they brought to the post.

This overcomes a number of the difficulties with the status quo option but:

- ▶ A committee has no permanent life – it is disestablished with each local authority election.
- ▶ Wellington City does not have a strong tradition of operating through this type of structure (in contrast with, say, Auckland City). Accordingly, it is uncertain that it would in fact enjoy the operational independence required.
- ▶ Its liabilities would still be those of Council. Accordingly, significant commitments would still require confirmation by Council, potentially limiting the ability to negotiate commercial arrangements with potential sponsors or business partners.

Neither the status quo nor the enhanced status quo option would overcome the policy adopted by some funders, such as the Community Trust of Wellington, that they will not fund local authority activity.

As a means of enabling the type of governance identified in this report, neither the status quo option nor the enhanced status quo is favoured.

## **A REGIONAL APPROACH**

From Wellington City's perspective the primary objective for the set of options considered in this section would be to secure funding for the Zoo as a regional facility. The rationale for doing so would be that the Zoo should be regarded as a regional rather than a city facility. In practice it is difficult to see that there is any persuasive case to be made for this, especially from a regional perspective.

The closest analogy is with what has been happening in Auckland where the regional approach is currently being pursued by Auckland City Council in respect of the Auckland Zoo. It has not found favour with other local authorities.

Other Auckland region local authorities acknowledge that the Zoo is a regional facility of some significance (a view supported by survey evidence). However, they also argue that Auckland City benefits by virtue of the Zoo's location. Their argument is that the Zoo acts as an attraction bringing people into Auckland who spend money on other goods and services within Auckland, so that Auckland City's funding for the Zoo is simply a form of promotional expenditure for the Auckland City economy, to the extent that it 'subsidises' visits by residents from the Auckland region outside Auckland City.

Some 20% of the Wellington Zoo's visitors come from within the Wellington region but not Wellington City. That relatively low proportion, coupled with the Zoo's location – visitors have to come through the city itself – suggests the same argument would be made at least as strongly by Wellington region local authorities.

The Auckland argument has been advanced in the context of developing a policy for regional funding of a range of attractions of which the Zoo is currently seen by the Auckland City Council as the first priority (as agreement has been reached on the long term funding of the Auckland War Memorial Museum). In Wellington it is doubtful that the Zoo would be seen as the most 'regional' of the various facilities funded by the City or as the top priority for seeking regional funding.

If the regional option were to be considered there are three possibilities:

- ▶ Transferring responsibility for the Zoo to a trust established in conjunction with other local authorities in the region (as is the case with the Wellington Regional Economic Development Agency). This is further considered in the discussion of the trust option below.
- ▶ Transferring management of the Zoo to the Wellington Regional Council, with future local government funding drawn through a regional rate.
- ▶ Transferring responsibility for Zoo management from the Community, Health and Recreation Committee to a joint committee of two or more local authorities within the region.

The Regional Council option would be legally feasible once the new Local Government Bill becomes law (assuming no change in the provisions dealing with powers of regional councils). Although consent of territorial local authorities is required if a regional council wants to undertake an activity already being done by a local authority, Wellington City's is the only consent that would be required.

It would shift complete responsibility for the Zoo away from the City to the Regional Council. Although the means of doing so would be a management contract, it is likely that, if the Regional Council were agreeable to taking responsibility for the Zoo, it would want enough control effectively to exclude Wellington City from significant influence – including the ability to require the Zoo to work in conjunction with other Wellington facilities such as the Karori Wildlife Sanctuary.

Such a shift is likely to be opposed by other local authorities on the basis that the real rationale would be shifting the cost from Wellington City ratepayers to regional ratepayers and they are likely to argue that there is no compelling case for doing so

The option of a joint committee is really a less effective means of achieving what would be accomplished through a local authority trust. Its additional drawbacks include that:

- ▶ A joint committee needs to be reconstituted every three years.
- ▶ A joint committee does not have separate legal status so that Wellington City would still, in practice, carry liabilities for operation of the Zoo but have less authority over them (although the agreement constituting the committee should deal with matters such as funding and assets and liabilities).
- ▶ Introducing other local authorities into a direct funding relationship with the Zoo, even if it could be achieved, might significantly complicate governance (funding decisions would be subject to three separate annual plan/LTFS/LTCCP processes and three contending sets of political judgements about Zoo priorities).

None of the regional options would satisfy the governance requirements outlined above. Each (with the possible exception of the Regional Council option and then only on the basis that it may be better placed to establish a Zoo-specific committee) would be unable to deliver strong focused leadership. Each could face significant difficulties in establishing stable, long term relationships with commercial sponsors. Only the trust option would be eligible for funding from donors whose policies excluded local authorities as recipients.

## **Category 2 • A Fully Commercial Model**

Under this model, the Zoo would be transferred to a Local Authority Trading Enterprise (LATE). (It is an explicit part of the brief for this report that privatisation is not an option.)

Theoretically a LATE could become the operator of the Zoo under a management contract with the Council. The principal purpose of a LATE is to operate a trading undertaking for the purpose of making a profit. This is not seen as a suitable vehicle for managing an activity that has overriding public good purposes and operates in an area in which public values are, generally, opposed to commercial participation.

## **Category 3 • The Trust Option**

Trusts are commonly used in the local authority sector as a means of pursuing council (community) objectives. Invariably<sup>6</sup> the form of trust chosen is an incorporated charitable trust. This has a number of advantages including:

- ▶ Incorporation provides trustees with broadly the same protection against personal liability as company directors have – although neither is absolute
- ▶ Once recognised by the Inland Revenue Department as charitable (a process separate and independent from incorporation), a charitable trust is exempt from income tax and donations to it are eligible for the charitable trust rebate. More importantly for large donations or gifts (such as the transfer of any council assets for less than full value), gift duty is not payable
- ▶ The trust deed – the trust’s constitution – can be purpose designed to suit the specific needs of the trust concerned (subject only to ensuring that no one can draw any private benefit other than in the normal course of dealing on arms length terms). This provides much greater flexibility than can easily be achieved with other structures such as companies or incorporated societies.

In considering the trust option we look initially at the use of a trust-based governance structure for the Zoo as a stand alone entity and then at its potential as the platform for a regional, sectoral or national approach.

The Council would establish (or promote the establishment of) an incorporated charitable trust. Its charitable purpose would be along the lines of advancing public understanding of

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<sup>6</sup> In all our considerable experience we have never come across a situation in which a local authority has chosen a different form of trust unless there is a statutory requirement to do so as with community trusts established with the proceeds of sale of port company shares – see Section 225C of the Local Government Act 1974.

and research into the conservation of endangered species. It would have a full set of powers, including commercial powers, enabling it, for example, to:

- ▶ Manage the Zoo itself.
- ▶ Operate commercial activities ancillary to its principal function of management of the Zoo.
- ▶ Enter into joint ventures, strategic alliances or other arrangements with third parties (commercial or non-commercial).
- ▶ Receive donations, borrow money, invest and generally manage its assets and liabilities.

Its governance structure – the nature and composition of its trust board, how trustees were to be selected and replaced, and the trust’s mode of operation – could all be purpose designed to suit the requirements of the Zoo. (One of the strengths of the charitable trust structure is that it can be ‘purpose built’.)

The trust document itself is just one of three instruments through which the Council would seek to secure the governance structure it requires. The other two are:

- ▶ The management contract.
- ▶ The funding/performance agreement.

The management contract would necessarily be long term, but terminable in the event of defined defaults. The purpose of making it long term is to give confidence to sponsors, lenders and others dealing with the trust that its right to manage the Zoo was secure. It would cover matters such as the transfer of assets and liabilities, ongoing capital development, and how assets and liabilities would be dealt with at the end of the contract.

The funding/performance agreement, as noted above, would be the means for giving the Council comfort that the trust would be focused on its desired outcomes and that its accountability back to the Council met Council requirements.

The success or failure of such a trust structure will be critically dependent on the quality of the trust board. The process for selecting and appointing trustees should be designed to ensure that the board capability, overall, meets the requirements set out at the governance summary on page 10 above. (Experience in selection of trustees for Wellington City Council-related trusts suggests that a relatively high calibre of person is prepared to make themselves available.)

This should be legitimated by public consultation. Under the present Local Government Act, it is doubtful that the Council would be obliged to consult. This will change once the new Local Government Bill becomes law. The consultation requirements take effect from the date the Act receives the royal assent and clause 70 of the Bill (Significant Proposals) would clearly require consultation.

The Council’s statement of proposal should entrench the ‘good governance’ expectations of the trustees.

A trust structure, better than any other, should satisfy the good governance requirements for an activity such as the Zoo. Thus:

- ▶ With a well-designed deed and associated instruments, trustees can be focused on development of a vision and the associated strategies including implementation.
- ▶ The deed can ensure a process for selecting/appointing trustees who are considered to have the right mix of skills, attributes and experience.
- ▶ A trust can combine the appropriate mix of public purpose, including respect for values such as those associated with the town belt, with animal welfare and with conservation, with a full range of powers to act commercially when it is appropriate to do so.
- ▶ As an entity separate from the Council, it can put in place decision making and accountability processes that match the requirements of likely partners, including major commercial sponsors.
- ▶ As a charitable trust separate from the Council, it is eligible for funding from donors whose policies exclude local authorities as such.
- ▶ Monitoring and accountability arrangements can be purpose-designed, as between the trust and the Council to meet the Council's needs, and as between the trust and its management to meet good governance objectives.
- ▶ The Council/Trust relationship can be designed to focus specifically on the outcomes the Council requires.

### **Category 3 • Regional, Sectoral and/or National Options**

The trust option just outlined would be capable of ready extension on a regional, sectoral or a national dimension. It would have all of the legal powers required to work in close cooperation/partnership or strategic alliance with Wellington-based or other entities undertaking complementary activity – whether in education, conservation or research.

#### **REGIONAL**

A trust could provide an alternative platform for a regional dimension. In much the same way as the Wellington Regional Economic Development Agency is now a form of partnership between Wellington, Porirua and Hutt cities, a Zoo trust could be supported by more than one local authority (the trust deed should be drawn to facilitate this type of possibility by ensuring that trustee appointment and selection processes could be varied to reflect the interests of different local authority or other funders)

In practice the trust option is unlikely to overcome the objections to the regional option set out above. Another argument against pursuing the regional option is that the WREDA structure itself is still in its settling down phase. It has been able to secure funding from only two of the region's four other local authorities. Neither of those two yet appear comfortable with its operation.

#### **SECTORAL OR NATIONAL**

If desired, a trust could provide a platform for merging the activities of the Zoo and the Karori Wildlife Sanctuary. (To facilitate this, it would be desirable to include a provision in the trust deed providing for amendment so that, for example, the trust board could be restructured if it were to encompass both the Zoo and the Sanctuary.)



Similar considerations apply if the trust were either to be the platform for a merger, or itself to be subsumed by another zoo or zoos. There is clearly a strong case to be made for merger from the perspective of building a strong zoo sector in New Zealand. (That, of course, is only one dimension of any case that might be made for a merger – local ownership/relationships may be seen as another dimension and one that could argue against merger.)

The primary point being made is that, properly designed, a trust structure facilitates the building of a diverse range of relationships without undue administrative or legal difficulty, provided that the entities themselves and key stakeholders are in agreement. The obvious prior condition is that the Zoo's governance itself is resolved and whatever governance structure is put in place by the Council is able to develop its Vision and Destination (strategic and implementation plans) so that it has a strong basis from which to proceed both in discussion with potential partners and with the Council itself.

This suggests that the question of future relationships is one that should be covered in the Zoo's funding/performance agreement, assuming that its future governance is through a separate entity.

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## RECOMMENDATION

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It is our clear recommendation that the preferred governance structure for the Wellington Zoo should be an incorporated charitable trust. This recommendation is subject to the following qualifications:

- ▶ The Trust takes over responsibility for the Zoo under a long-term management contract, with the Council remaining the legal occupier of the Zoo site.
- ▶ The funding relationship between the Council and the Trust is established through a funding/performance agreement that includes a requirement for the Trust to prepare a strategic plan and a business plan clearly identifying the outputs/outcomes to result from Council funding and appropriate milestones/performance measurements associated with those. The agreement should include whatever expectations the Council has of the Trust in considering its future relationships with the Karori Wildlife Sanctuary Trust or any other entities including New Zealand's other zoos.
- ▶ The appointment/selection process for trustees is designed to ensure, as far as possible, the appointment of a board with the mix of skills, experience and attributes outlined in the summary at page 10 above.
- ▶ The process of establishing the Trust, and transferring Zoo management to it, takes account of the recommendations in the section on implementation below.

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## IMPLEMENTATION

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In this section we set out our principal recommendations for managing the implementation phase. We expect the level of public interest to be high with the potential for quite strong contending views (for example on use of the town belt, especially if the Zoo is expected to generate a higher level of commercial income, and on animal rights/conservation issues).

The Council has indicated that developing a vision, mission and long term strategy for the Zoo should be the responsibility of the future governance structure rather than of the Council itself. This will require the Council to consider carefully the point at which it goes to consultation on the proposal for a new governance structure. If it does so before the vision/mission/strategy is developed, it may be hard placed to explain credibly why it wishes to put a new governance structure in place. If it wishes to draw on the new vision/mission/strategy as part of its proposal for public consultation, then it will need to delay consultation – and any final decision on the move to a new governance structure – until after the proposed trust has been established, trustees selected/appointed, and they have developed and agreed the vision/mission and strategy with the Council.

Our recommendations on implementation assume that the Council will want to follow this latter approach in order to have the opportunity of demonstrating to its public the expected future strategy and direction for the Zoo, and the likely benefits that will result.

Whichever approach the Council adopts, it should ensure that trustees are in place before key decisions affecting the proposed trust's future operation and management are taken. These include finalising the trust deed and management contract.

Accordingly, our recommendations for implementation, based on the assumption that the Council will go to consultation once trustees have been appointed and have completed the vision/mission/strategy phase, are:

- ▶ The first step in implementation should be the selection and appointment of the persons to become trustees. An objective process should be used designed to select a board with the mix of skills, experience, and attributes needed to meet the requirements set out in the summary at the end of the Governance section of this paper (page 10).
- ▶ As background for the selection process, trustees should be given an overview of what is expected of them in their role (a copy of this report may be appropriate for this purpose together with an outline of the proposed management agreement and a draft trust deed).
- ▶ Once selected, trustees should complete agreement with the Council on the terms of the proposed trust deed. Past experience with other trusts with which the Council has been associated suggests that this should include allowing trustees to obtain their own separate legal advice (the Council should expect trustees to have a particular focus on provisions enabling them to be indemnified by the trust provided that they have acted in good faith).
- ▶ With the support of Council (including Zoo) staff and other resources as may be agreed, trustees should develop a vision, mission and strategy for the future operation and development of the Zoo. As part of this process, Council and trustees should also

undertake the equivalent of 'due diligence' in order to identify operational and other matters that will need to be addressed as part of the transfer to a new governance structure. (The Council should expect that trustees would want to start with a 'clean slate' in this respect rather than, for example, being faced with the need to fund deferred maintenance.). This should also include an assessment of the likely impact on operating costs of the shift to a trust structure. Obviously there will be some costs that do not currently arise such as trustee fees and expenses. Matters such as how to resource the various corporate service needs of the trust should be resolved at least indicatively. Potential savings should also be identified.

- ▶ The Council then goes to public consultation on the proposal that management of the Zoo be transferred to a new governance structure, with that proposal supported by trustees' work on vision, mission and strategy. It would be useful for this to include an assessment by trustees of the potential to increase Zoo revenue and in-kind support under a trust structure.
- ▶ Provided that, following public consultation, the Council confirms its decision to transfer the Zoo to a new governance structure, the Council and the trustees then negotiate:
  - The final terms of the management contract.
  - The funding/performance agreement.
  - The business plan.
- ▶ Transfer of the Zoo to trust management take place as soon as feasible after completion of the management contract, funding/performance agreement and business plan.
- ▶ Throughout these various steps the Council, and the trustees once selected, ensure that staff are kept fully briefed on developments and appropriate provision be made to deal with the ongoing employment of each current staff member.

A further matter to consider is the impact of the council-controlled organisations provisions in the forthcoming Local Government Act. Those are likely to increase both compliance costs and uncertainty in the Trust/Council relationship. It may be desirable to design the trust deed so that the proposed trust falls outside those provisions.

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## **APPENDIX • AUCKLAND AND HAMILTON ZOOS – CURRENT GOVERNANCE AND BRIEF HISTORY**

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### **Auckland Zoo**

The Auckland Zoo was established on its present Western Springs site by the Auckland City Council in 1922. For 10 years prior to that it had been operated as a private undertaking by an Onehunga businessman.

It has remained under Council ownership since 1922 and over the whole of that period its governance has been the responsibility of a Council committee. For most of the period responsibility was with the Council's Parks and Reserves Committee. Following local government amalgamation in 1989 a separate committee, known as the Zoo Enterprise Board and made up primarily of non-councillor appointees, was established to take responsibility for Zoo management. This parallels similar structures such as the management board responsible for the Auckland City Art Gallery.

The Zoo works with two associated structures, the Zoological Society and the Auckland Zoological Park Charitable Trust. The Society was established in 1929 as a means of involving residents with a particular interest in zoological matters and in order to encourage scientific study. For many years it had a close relationship with Auckland University although, in more recent times, this has waned somewhat. Membership is relatively small but still, apparently, quite enthusiastic. Its focus is on providing volunteer support for the Zoo and occasional small but often strategic amounts of funding – for example to assist zookeepers attend overseas conferences.

The Auckland Zoological Park Charitable Trust was established by the Auckland City Council in September 1992 with local business and professional people as trustees. The principal reason for establishing the Trust was for it to operate as a separate fundraising body on behalf of the Zoo. Advantages were seen to include:

- ▶ The charitable status of the Trust, with its associated tax benefits.
- ▶ A measure of independence from the Council as the Zoo owner and operator – potential donors would have the assurance that, rather than their contributions potentially disappearing into general Council funds (if only because Council support might be reduced to offset the additional inflow from donations) they could be assured that the funds they provided would go to specific projects and be ring fenced against any potential reduction of Council funding.
- ▶ The ability for the Trust, through the connections of trustees, to 'shoulder tap' potential donors – something that MDL understands has been quite effective in terms of encouraging well to do Aucklanders to make provision for the Zoo in their wills.

The Zoo also operates a Friends Programme, but more as a marketing tool than as an organisation.

In 2001 the Auckland City Council commenced reviewing the governance structure of the Zoo and engaged MDL to advise it. Its preference was for the establishment of the Zoo as a

separate trust but with the intention that it should be regionally rather than Auckland City Council funded. This was part of a broader strategy on the part of Auckland City Council in seeking to shift a number of facilities that it owns and funds towards a regional funding base, taking the view that facilities that are used by Aucklanders generally should be funded by Aucklanders generally.

The Council's policy in that respect is not yet shared by its fellow local authorities so that, for the moment, the proposed restructuring has been put on hold.

## **Hamilton Zoo**

Hamilton Zoo began as the Hilldale Game Farm operated by the Powell family. In the 1970s it was converted into a trust structure – the Hilldale Game Farm Trust. At that time it received some limited support from the Hamilton City Council.

The Council took over ownership of the Zoo at the beginning of the 1990s. Initially it was managed as a Council business unit under a committee structure. In 1991 this was established as a management board, in 1994 it was converted to an advisory board, and in 1995 disestablished with governance being returned to a conventional Council committee structure.

This decision was not Zoo-specific. The Council had a number of management board run structures all of which were disestablished on the basis of a preference for a 'one council' approach reaffirming these various activities as core business of Council, a view that still prevails.

The most recent development is that the Hamilton City Council is now exploring the establishment of a separate Zoo trust - broadly the equivalent of the Auckland Zoological Park Charitable Trust – as a means of providing a more cohesive Zoo voice, especially in representations to potential funders.