

## 11. ESTABLISHMENT OF CHARITABLE TRUST

<b>General Manager responsible:</b>	General Manager Regulation and Democracy Services DDI 941-8549
<b>Officer responsible:</b>	Acting Legal Services Manager
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### PURPOSE OF REPORT

1. The purpose of this report is to seek support for a proposal to establish a charitable trust in the name of the late Rod Donald.
2. It is proposed that the objectives of the trust will focus on historical, environmental and community based projects in the Banks Peninsula area.

### EXECUTIVE SUMMARY

3. Prior to amalgamation with Christchurch City, the Banks Peninsula District Council resolved that it would sell a number of endowment properties that it owned in Canterbury. Notice of this was given in the Council's draft 2004-14 LTCCP and consulted on before the LTCCP was adopted.
4. Sections 140 and 141 of the Local Government Act 2002 allow the sale of endowment properties provided that the proposed use of the proceeds is consistent with the purpose of the endowment. In all cases, the properties were originally endowed to provide income that would aid the (then) borough funds.
5. The transitional committee established to manage the amalgamation of Christchurch City and Banks Peninsula District Councils recommended that the income from the proceeds of sale of the endowment properties be used to establish a trust to consider appropriate projects that would enhance the rural, historical or environmental nature of Banks Peninsula. This report is bringing that recommendation one step further towards implementation.
6. The proposal is supported by the Mayor, Gary Moore, and Councillor Bob Parker. They have suggested that the proposed trust be established in the name of the late Rod Donald in recognition of his commitment to Banks Peninsula.
7. Legal advice provided to Council staff confirms that the proposed use of the proceeds of sale of the endowment properties is consistent with the original purpose of the endowment. There is approximately \$2.8 million available to establish a trust.
8. It is proposed that the trust is established as a Council controlled organisation. This will require adopting the special consultative procedure before the Council makes its decision.

### FINANCIAL IMPLICATIONS

9. The endowment properties were sold by the Banks Peninsula District Council before it amalgamated with the Christchurch City Council. The proceeds of sale have been held undisbursed since then.
10. One of the benefits of establishing a charitable trust for the purposes set out in this report is that some of the cost of providing environmental, historical and community based facilities in the Banks Peninsula area can be met without recourse to other financial resources of the Christchurch City Council.
11. The income that may be generated from prudent investment of the trust funds will be greater than the income earned from the continued ownership of the endowment properties.

### Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

12. The use of the proceeds of sale of the endowment properties referred to in this report was indicated in the 2004-14 LTCCP adopted by the Banks Peninsula District Council.
13. The funds have been held undisbursed and are therefore available to be used for purposes consistent with the original endowments.

## LEGAL CONSIDERATIONS

14. In its 2004-14 LTCCP, the Banks Peninsula District Council noted as follows:

*"The Council has a number of endowment properties which if sold, the proceeds of sale must be applied to a use which is consistent with the purpose of the endowment (Section 140-141 LGA 2002)."*

15. The Council then goes on to state that:

*"The proceeds of these properties (net of disposal costs) will be held until sufficient capital can be aggregated to buy land of a larger value as soon as it is practical."*

16. The statement does not strictly reflect the provisions in the 2002 Act. The requirement to use the proceeds of sale of endowment properties for the purchase of replacement land did not survive the repeal of the 1974 Act. The matter will be rectified during the consultative process necessary to establish the trust, if this proposal is supported by the Council. It is proposed that this statement is removed and replaced with the following:

*"The proceeds of sale of these properties (net of disposal costs) will be settled on a Council controlled charitable trust with objectives that are consistent with the purpose of the original endowments."*

17. Following adoption of its 2004-14 LTCCP, the Banks Peninsula District Council sold its remaining endowment properties.

18. All of the properties were endowed by the Crown as a means of deriving income that could be used to aid the (then) borough funds. Through a series of amalgamations, the properties were eventually vested in the Banks Peninsula District Council. The proceeds of sale are held by the Christchurch City Council.

19. Establishing a charitable trust to administer the proceeds of sale of the properties for the purposes set out in this report is consistent with the original purpose of the endowment. This advice has been confirmed by Buddle Findlay.

20. The proposed trust should be a Council controlled organisation. This will enable the Council to maintain control over the use of the funds, as contemplated by the original endowment.

21. Section 56 of the Local Government Act 2002 requires the Council to adopt the special consultative procedure before it can make a decision on whether or not to establish a Council controlled organisation. A statement of proposal and summary of information has been prepared and are attached to this report.

### **Have you considered the legal implications of the issue under consideration?**

22. Yes.

## ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

23. Referred to earlier.

### **Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?**

24. Not applicable.

## **ALIGNMENT WITH STRATEGIES**

25. Both the Banks Peninsula District Council and the Christchurch City Council assessed the level of income derived from the endowment policies that they owned against the income that could be earned from other investments. In each case, it was determined that the endowment properties offered a meagre return.
26. In June 2007 the Christchurch City Council resolved to sell the last of its endowment properties.

### **Do the recommendations align with the Council's strategies?**

27. Yes.

## **CONSULTATION FULFILMENT**

28. The Banks Peninsula District Council's decision to sell its endowment properties was made following consultation with its ratepayers by way of the special consultative procedure.
29. If the Christchurch City Council decides to proceed with the proposal set out in this report then it will be necessary for the same consultative procedure to be adopted before a decision is made.
30. Members of the Akaroa/Wairewa and Lyttelton/Mt Herbert Community Boards have been consulted on the proposal and have indicated their support.

## **STAFF RECOMMENDATION**

It is recommended that the Council resolve to:

- (a) Approve in principle the establishment of a charitable trust to administer the funds obtained from the sale of endowment properties owned by the Banks Peninsula District Council.
- (b) Settle the trust for the purpose of aiding the maintenance and development of historical, environmental and community based projects in the Banks Peninsula area.
- (c) Approve the statement of proposal and summary of information attached to the staff report.
- (d) Adopt the special consultative procedure for consulting with the public on the proposal.
- (e) Appoint a hearings panel of three Councillors to consider any oral submissions that may be made in respect of the proposal and report back to the Council.

## BACKGROUND (THE ISSUES)

31. As indicated earlier in this report, the Christchurch City Council is holding the sum of \$2.8 million being the proceeds of sale of endowment properties owned by the Banks Peninsula District Council. Sections 140 and 141 of the Local Government Act 2002 require the proceeds to be applied to a use that is consistent with the original purpose of the endowments.
32. The original purpose of the endowments was to provide income to be used to aid the (then) borough funds.
33. Section 141 (3) of the Act states that:

*“If a Local Authority is subject to reorganisation, the proceeds of a sale or exchange of property must be applied to the District or Districts of the new Local Authority or Authorities arising from the reorganisation of which the Local Authority formed part.”*
34. At a meeting of the Banks Peninsula District Council on 8 February 2006 the Mayor, Bob Parker, raised the matter of the proceeds of sale of Council's endowment properties. The minutes of the meeting record that he suggested that the Council consider making a special fund that would be available for historical, social and environmental projects on Banks Peninsula which would deliver benefits for all rate payers of the enlarged District. The Mayor was given authority to seek the support of the Christchurch City Council in the establishment of the fund.
35. At its meeting on 21 February 2006 the Christchurch City Council/Banks Peninsula District Council transitional joint committee resolved to recommend to the Christchurch City Council that the income from the proceeds of sale of the endowment properties be used to establish a legacy fund on the Banks Peninsula and that an appropriate body be established to administer the fund. The objective of the trust would be to consider appropriate projects that would enhance the rural, historical or environmental nature of the Banks Peninsula.
36. Since that time the Mayor Gary Moore and Councillor Bob Parker have proposed establishing a charitable trust. They have suggested that it be dedicated to the memory of the late Rod Donald. Both believe that the preservation and development of environmental, historical and community based assets in the Banks Peninsula area would be a fitting tribute to Mr Donald.
37. Legal advice on the proposed use of the proceeds of sale of the endowment properties has been obtained. It confirms that establishing a charitable trust to administer the funds for the benefit of the Banks Peninsula and Christchurch City communities is a use that is consistent with the purpose of the original endowment.
38. The vision that the Mayor and Councillor Parker have for the trust is that the initial focus of the trustees will be on assessing future projects and sourcing further contributions to the trust fund. It is expected that if the trustees can attract significant financial support then the fund should be of a size that will enable it to grow whilst at the same time enabling sufficient income to be applied to suitable projects.
39. The proposal has been discussed with members of the Akaroa/Wairewa and Lyttelton/Mt Herbert Community Boards. They have supported the proposal.
40. For the reasons set out earlier in this report, the proposed trust should be a Council controlled organisation. This will enable the Council to maintain control over the appointment of trustees and to monitor their performance in meeting the objectives of the trust.
41. If Councillors decide to approve in principal the establishment of the trust, the next step is to put the proposal out for public consultation. This will be by way of the special consultative procedure.
42. The period of consultation will be for one month followed by time to be set aside for public hearings, if there are any submitters that wish to be heard. Assuming that there are no delays in the process, it may be possible for this Council to announce the establishment of the Charitable Trust at its final meeting on 11 October 2007.

43. Attached to this report is a statement of proposal and summary of information to be made available to the public and distributed in accordance with the requirements of the Local Government Act 2002.
44. Also attached is a draft Trust Deed. This will be prepared in its final form once the views of the community are known and trustees appointed. The final name for the trust will be chosen by the trustees, after appropriate consultation.

#### **THE OBJECTIVES**

45. The objectives of this report are to seek support for the proposed establishment of a charitable trust in the name of the late Rod Donald. As indicated earlier, it is intended that the objectives of the trust will be to maintain and develop historical, environmental and community based projects in the Banks Peninsula area.

#### **THE OPTIONS**

46. The first option for the Council is to decide not to approve the establishment of the trust. The proceeds of sale of the Banks Peninsula District Council endowment properties would be applied to some other purpose that is consistent with the original endowments.
47. The second option is to approve the establishment of the trust for the reasons set out in this report.
48. A third option for the Council would be to approve the establishment of the trust but decide not to allow trustees to use the funds obtained from the sale of the endowment properties. If this was supported by the community, then it would be up to the trustees to set about attracting sufficient financial contributions to enable them to meet the trusts objectives.

#### **THE PREFERRED OPTION**

49. The preferred option is the second option.