


25. **REPORT OF THE HEARINGS PANEL -
PROPOSED CHARITABLE TRUST FOR BANKS PENINSULA PROJECTS**



General Manager responsible:	Acting General Manager Corporate Services, DDI 941-8671
Officer responsible:	Legal Services Manager
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PURPOSE OF REPORT

1. The purpose of this report is to seek a Council resolution to establish a charitable trust as a Council-controlled organisation.
2. The report also recommends the appointment of a subcommittee to consider issues such as the terms of a trust deed, the naming of the trust, its objectives, a process for the appointment of trustees and the use of accumulated funds in the event of the trust being wound up.
3. In addition to these matters, the report seeks resolutions from the Council that amend the 2004-14 Banks Peninsula District Council LTCCP and transfer to the proposed trust the proceeds of sale of endowment properties that were owned by the Banks Peninsula District Council.

EXECUTIVE SUMMARY

4. At its meeting on 30 August 2007, the Council resolved that it:
 - “(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 the natural and built heritage, environmental and community based projects in the Banks Peninsula area.*
 - “(c) *Approve the Statement of Proposal and Summary of information attached to [a] staff report as amended in relation to the natural and built heritage and the definition of the Banks Peninsula area.*
 - “(d) *Adopt the Special Consultative Procedure for consulting with the public on the proposal.*
 - “(e) *Appoint a Hearings Panel comprising the Mayor and Councillors Bob Parker and Sue Wells to consider any oral submissions that may be made in respect of the proposal, and report back to the Council.”*
5. The proposal was publicly notified on 1 September 2007. At the time the opportunity to make submissions ended on 3 October 2007 46 written submissions were received. Seven submitters asked to be heard by the Hearings Panel.
6. The Hearings Panel heard submissions on 4 and 8 October 2007.
7. Of the 46 submitters, only one clearly opposed the proposal. Two others objected to the Council having control over the use of the funds. In general there was widespread support for the proposal although there were many relevant comments made with regard to the name of the trust, the appointment of trustees, the projects with which the trust should be involved and protection of the funds in the event of the trust being wound up.
8. Copies of all written submissions received are tabled and a summary of them prepared by Council staff is attached to this report (Attachment 1).

9. As a result of the submissions received, it is recommended that the Council approve the establishment of the trust as a Council-controlled organisation but that it also appoints a subcommittee to consider the comments made by submitters before a Deed of Trust is prepared and registered in its final form.
10. It is further recommended that the subcommittee comprises the members of the Hearings Panel, Garry Moore, Bob Parker and Sue Wells. They have an understanding of the issues raised by submitters and are well-placed to ensure that those issues are taken into account and, where appropriate, reflected in the Deed of Trust. This will be brought back to the Council for approval.
11. There was no opposition to the proposed amendment to the 2004-14 Banks Peninsula District Council LTCCP.

FINANCIAL IMPLICATIONS

12. The only financial implication arising from the Council adopting the recommendations contained in this report relate to the costs incurred as a result of the preparation and registration of a Deed of Trust and other documentation required to establish the organisation. In addition to staff time, external advisers will be consulted as and when required.
13. The proceeds of sale of the endowment properties have been held by the Council in a separate interest-bearing account since amalgamation.

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

14. A suggested use of the proceeds of sale of the endowment properties was identified in the 2004-14 Banks Peninsula District Council LTCCP. The Christchurch City Council is responsible for implementing the provisions of that LTCCP as part of its own 2006-16 LTCCP.
15. To the extent the proceeds of sale of the endowment properties have remained undisbursed and are available for the purposes set out in the Statement of Proposal, the recommendations contained in this report align with the Council's budgets.

LEGAL CONSIDERATIONS

16. Councillors have already been provided with advice from the Legal Services Unit and from its external legal adviser, Buddle Findlay. That advice is that 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. That purpose was to provide income to be used to aid the [then] Borough funds.
17. Investment of the proceeds of sale and use of the income generated from that investment is consistent with that purpose.
18. Whilst two of the submitters opposed the establishment of a Council-controlled organisation to administer the funds, it is recommended that this is the appropriate structure to be adopted. This will enable the Council to maintain control over the use of the funds, as contemplated by the original endowment.
19. The Special Consultative Procedure was adopted and carried out by the Council in accordance with Section 56 of the Local Government Act 2002.
20. There were no objections to the proposal that the Council amend a statement made in the 2004-14 Banks Peninsula District Council LTCCP that the proceeds of sale of the endowment properties would be held until sufficient capital can be aggregated to buy land of a larger value as soon as it is practical. In its Statement of Proposal, the Christchurch City Council proposed that this statement be removed and replaced with the following:

"The proceeds 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."

21. An LTCCP cannot be amended unless the Special Consultative Procedure is used. The Council has complied with this requirement.

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 have assessed the level of income derived from the endowment properties that they owned against the income that could be earned from other investments. In each case, it has been 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 required before the Council adopted its 2004-14 LTCCP.

29. The Christchurch City Council adopted and used the Special Consultative Procedure with regard to the proposal to establish the proposed trust as a Council-controlled organisation and to amend the 2004-14 Banks Peninsula District Council LTCCP.

30. There is no statutory impediment to the Council making decisions in respect of the recommendations contained in this report.

HEARINGS PANEL RECOMMENDATION

It is recommended that the Council:

- (a) Approves the establishment of a charitable trust as a Council-controlled organisation for the purpose of administering the funds obtained from the sale of endowment properties owned by the Banks Peninsula District Council.
- (b) Authorises the General Manager Corporate Services to transfer to the trust the funds referred to in (a) above at the appropriate time.
- (c) Appoints a subcommittee comprising Garry Moore, Bob Parker and Sue Wells.
- (d) Authorises the subcommittee to attend to the preparation of a suitable Deed of Trust including:
 - (i) Naming of the trust;
 - (ii) A process for the appointment of trustees;
 - (iii) Objectives of the trust;
 - (iv) Use of the trust fund in the event of the trust being wound up; and
 - (v) Definition of the area in which the trust should operate.
- (e) Requests the subcommittee to:
 - (i) Undertake further consultation with the communities affected by or with an interest in the proposed objectives of the trust;
 - (ii) Ensure that a draft Statement of Intent in respect of the trust is available for consideration by the Council in due course;
 - (iii) Consider the potential for increasing the level of trust funds from sources other than (and in addition to) the funds obtained from the sale of the endowment properties referred to in (a) above; and
 - (iv) Prepare a report for consideration by the Banks Peninsula Community Boards and the Council containing the committee's recommendations in respect of the Deed of Trust and Statement of Intent.
- (f) Resolves that the subcommittee is not discharged on the coming into office of the members of the Council elected or appointed at, or following the next triennial general election.
- (g) Approves the amendment of the 2004-14 Banks Peninsula District Council LTCCP by removing the statement 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."

And replacing it with the following statement:

"The proceeds 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 endowment."

BACKGROUND (THE ISSUES)

31. The Christchurch City Council is holding a 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 endowments.
32. The original purpose of the endowments was to provide income to be used to aid the [then] Borough funds.
33. The Christchurch City Council/Banks Peninsula District Council Transitional Joint Committee recommended that the income from the proceeds 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 Mayor and Councillor Bob Parker proposed establishing a charitable trust. It has been suggested that it be dedicated to the memory of the late Rod Donald.
34. Legal advice has been obtained in respect of the proposed use of the proceeds of sale of the endowment properties. 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.
35. The Council has been advised that the proposed entity should be a Council-controlled organisation. This was approved in principle by the Council at its meeting on 30 August 2007. The Council also approved a Statement of Proposal and Summary of Information to be put out for public consultation on the proposal.
36. The Statement of Proposal and Summary of Information were publicly notified on 1 September 2007 (Attachment 2). At the time the opportunity to make submissions ended on 3 October 2007 46 written submissions were received. Of these seven submitters asked to be heard.
37. Of the 46 submitters, only one clearly opposed the proposal. Two others objected to the Council having control over the use of the funds. In general there was widespread support for the proposal although there were many relevant comments made with regard to the name of the trust, the appointment of trustees, the projects with which the trust should be involved in and protection of those funds in the event of the trust being wound up.
38. Also, there were views expressed about the area in which the trust should operate. It has been suggested that this should be the geographical area of Banks Peninsula, or the Banks ecological area.
39. Copies of all written submissions received are tabled and a summary of them prepared by Council staff is attached to this report (Attachment 1).
40. As a result of the submissions received, it is recommended that the Council approve the establishment of the trust as a Council-controlled organisation but that it also appoints a subcommittee to consider the comments made by submitters before a Deed of Trust is prepared and registered in its final form.
41. It is further recommended that the subcommittee comprises Garry Moore, Bob Parker and Sue Wells and that it reports back to the Council in due course with a draft Deed of Trust and Statement of Intent for consideration.
42. There was no opposition to the proposed amendment to the 2004-14 Banks Peninsula District Council LTCCP.

THE OPTIONS

43. The first option for the Council is to decide not to approve the establishment of the charitable trust as a Council-controlled organisation. The Special Consultative Procedure was adopted to engage with the public in respect of the proposal and only two submitters opposed this structure. Whilst there were widespread comments with regard to the name of the trust, the process for appointing trustees, the proposed objectives of the trust and the use of the trust fund in the event of the trust being wound up, there was general support for the entity being a Council-controlled organisation.
44. The second option is for the Council to decide not to approve any entity to administer the funds that the Council holds. It is open for the Council to deal with the matter in its normal course of business. However, the Council has already approved in principle the establishment of a charitable trust as a Council-controlled organisation for the purposes referred in this report and this proposal has received general support from the public.
45. The third option is for the Council to approve the establishment of the charitable trust as a Council-controlled organisation for the purposes referred to in this report. It has already approved this proposal in principle and it is supported by all but two of the written submissions received by the Council as a result of public consultation. The reasons for the proposal, including the social, environmental, cultural, economic and financial considerations are set out in the Statement of Proposal that was publicly notified on 1 September 2007. In view of the comments made by submitters during the consultation process, it is recommended that if the Council decides in favour of this option, it appoints a committee to consider those comments and make recommendations with regard to the terms of the trust deed under which the objectives of the trust will be carried out.
46. Whichever option is adopted by the Council, it is recommended that it approves the amendments to the 2004-14 Banks Peninsula District Council LTCCP referred to in this report.

THE PREFERRED OPTION

47. The preferred option is the third option, together with the adoption of the recommended amendments to the 2004-14 Banks Peninsula District Council LTCCP.