

### 3. ROBERT McDUGALL ART GALLERY - LOCAL BILL

**Officer responsible**  
Legal Services Manager

**Author**  
Peter Mitchell, DDI 371-1549, Rob Dally, DDI 3711-500

#### INTRODUCTION

The purpose of this report is to seek authority from the Council to promote a local Bill which will provide for the future use of the Robert McDougall Art Gallery after the McDougall Art Gallery is vacated by the Council upon completion of the new Art Gallery.

#### GENERAL BACKGROUND

The Council has, by resolution, adopted a process for considering future use options for operational property assets through a decision-making flow chart process where the details of properties released (or to be released) from operational use are circulated internally to all Council units, including advocacy teams. Details of the McDougall Art Gallery have been circulated to all internal units with no confirmed ongoing Council use being indicated.

It should be noted that the building is listed as a Group 1 heritage item and is registered as a Category 1 historic place by the New Zealand Historic Places Trust Pouhere Taonga under section 23 of the Historic Places Act. Any proposals for change to the heritage fabric of this building will require a resource consent as per matters outlined in the City Plan and Resource Management Act.

Contemporaneously with the above process, the following informal discussions/actions have been taking place:

- (a) The Property Manager has discussed future use options with the direct descendants of Robert McDougall (grandchildren) who have confirmed a desire for wide community use similar to that which may be available through Canterbury Museum stewardship of the property;
- (b) The Council's senior heritage planner has informally discussed future use issues with a number of interested heritage groups and has also met with family;
- (c) A conservation plan has been commissioned for the Robert McDougall Art Gallery, setting a blueprint for future use of the building;
- (d) The Canterbury Museum has confirmed its interest in utilising the McDougall when the Art Gallery use terminates (refer attached letter);
- (e) Discussions have taken place with representatives of Friends of the Botanic Gardens.

#### LEGAL BACKGROUND

The construction of the Robert McDougall Art Gallery in the Botanic Gardens was authorised by section 54 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1925.

That section provided in part:

- “(1) *The land hereinafter described, being part of Reserve 25 in the City of Christchurch (the control of which is vested in the Christchurch Domain Board), is hereby vested, subject to the provisions of this section, in the Corporation of the City of Christchurch as a site for a public art gallery freed and discharged from the existing reservation over the same.*

- (3) *If the said Council fails to erect an art gallery on the said land within a period of five years after the passing of this Act, or if, having erected a building for an art gallery within that period, it thereafter at any time ceases to use such building for the purpose of an art gallery, the Governor-General may, by Order in Council, revoke the vesting of the said land in the said Corporation, and thereupon the said land and the buildings thereon shall revert to and become vested in His Majesty as part of the said Reserve 25, and the control thereof shall revert to the Christchurch Domain Board."*

It will be noted that section 54(3) addresses the situation where the Council no longer uses the building "...for the purpose of an art gallery..." In that situation the Crown has a discretion to revoke the vesting of the McDougall Art Gallery land in the City Council and that the land and buildings would then be vested in the Crown with control only (not ownership) of the land and buildings being with the City Council. The City Council today is the successor of the Christchurch Domain Board.

This means that the Council potentially could lose the ownership of the McDougall Art Gallery and would only be left with the control of the building if the Crown chose to exercise the right conferred in section 54(3).

In my opinion there is legal doubt today as to the ability of the City Council to permit the occupation of the McDougall Art Gallery by the Canterbury Museum Trust Board or any other party without a change to the 1925 Act. The use of the Gallery would be similar to the purposes for which the 1925 Act was passed. However, for the reasons set out below it is considered necessary that the Council promote a local Bill.

The 1925 Act is expressed in terms of the City Council's occupation of the McDougall Art Gallery and not in terms of legal occupation by third parties, be they the Canterbury Museum Trust Board or any other party.

I attach for information of Councillors a copy of an opinion dated 2 March 2001 from Buddle Findlay which discusses the legal issues in greater detail. It will be noted that that firm reaches the view that it is arguable today that the Council can lease the building to the Canterbury Museum Trust Board or any other party, as an example, for an "art gallery" but they recommend the Council seek amending legislation in the time period before the new Art Gallery is opened.

I concur with that view. I believe that for an important public facility such as the McDougall Art Gallery that there not be any legal doubts as to the Council's ability either to lease the building or for there to be room for legal arguments to arise at a later date as to whether use by a third party falls within the phrase "Art Gallery". In my opinion it would be unwise for the Council to place itself in the position where it is relying upon the Crown not to exercise the power clearly conferred on the Crown in subsection (3) to revoke the vesting of the land and building in the City Council if the Crown takes the view that at some time in the future, the then current use does not fall within the words "Art Gallery".

I believe that the Council should address this issue by now promoting a local Bill which will:

- (a) repeal the 1925 Act;
- (b) clearly state that the land and building is to be vested in the City Council for purposes to be set out in the Bill;
- (c) clearly authorise the Council to either use the building itself or to permit third parties to use the building for such purposes as may be set out in the Bill.

Local Bills are a normal method of resolving this type of issue and the Council has resolved to promote two other Bills, one being in relation to Lancaster Park and the other being in relation to the Nurses' Hostel.

The process for the promotion of a local Bill is that once the outline of the terms of the Bill have been settled by the Council, the Bill itself would be drafted by the Legal Services Unit, there would be consultation with local organisations and government departments with an interest in this matter, and the Bill would then be promoted in the House through the appropriate Parliamentary processes. Estimated direct costs to the Council would be \$2,500 and estimated time for the Bill to be enacted would be approximately two years.

## CONTENT OF THE BILL

If the Council were to agree to the promotion of the local Bill, then the more difficult issue will be what uses should the Bill authorise the Council to permit within the McDougall Art Gallery. I understand that, as well as an interest from the Canterbury Museum Trust Board, interest has been expressed by other parties in Christchurch in terms of future use of all or part of the McDougall Art Gallery. In this respect the Council has three options in terms of what the Bill can provide for:

- (a) That the Council “...*may lease, licence, or let all or any part of the building upon such terms and conditions as the Council thinks fit.*” This is the situation with the Old Municipal Chambers under the Christchurch City (Old Municipal Chambers) Empowering Act 1989;
- (b) That the list of activities for which the Council may lease the building be specified in the Bill itself;
- (c) That the Bill provide the Council may lease the building to the Museum Trust Board.

It will be necessary for the Council to decide which of those 3 options it prefers, and, in respect of (b), what are the activities it is willing to authorise within the McDougall Art Gallery into the future. In considering future use it is necessary for the Council to keep in mind the purposes for which the 1928 Act was enacted; the historic character of the building, its design and development as an art gallery and its setting in the Botanic Gardens. It should be borne in mind that the life of any new Act for the McDougall Art Gallery would be approximately 50 to 70 years.

To this end the Council could appoint a subcommittee of Strategy and Resources Committee to discuss the terms of the Bill in greater detail and to make a recommendation to the Council as to the form the Bill should take. That subcommittee itself could seek representations from the public.

- Recommendation:**
- 1. That the Council promote a local Bill to provide for the future use of the Robert McDougall Art Gallery.
  - 2. That the Council appoint a subcommittee of the Strategy and Resources Committee to consider the future use of the McDougall Art Gallery to be provided for in the Bill.

- Chairman's Recommendation:**
- 1. That the Council declare its intention to promote a local bill which would enable the Robert McDougall Art Gallery to be used by the Canterbury Museum Trust Board for the display of works of art.
  - 2. That the views of the public be sought on this proposal and alternative compatible uses.