

7. VBASE CHARITABLE TRUST



General Manager responsible:	General Manager, Corporate Services Unit DDI 941-8528
Officer responsible:	Unit Manager, Corporate Finance
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PURPOSE OF REPORT

1. To enable the Council to consider a proposal from Vbase Ltd that a charitable Trust be formed to administer a collection of sports memorabilia. The trust would be a Council Controlled Organisation (CCO).

EXECUTIVE SUMMARY

2. Vbase Ltd (Vbase) has negotiated the purchase of a significant collection of sports memorabilia. The collection has been paid for by a local benefactor with the intention that a charitable Trust be formed to manage and eventually own the collection for the benefit of the public.
3. Because Vbase is itself a CCO, any entity in which Vbase has a controlling interest is also a CCO.
4. In March and April 2010 the Council undertook a special consultative procedure before a decision was made to approve the establishment of 3 non-active CCOs. At its meeting on 21 June 2010 the Council resolved to:

“Approve the establishment of 3 Council controlled organisations to be used, following further Council approval, should appropriate opportunities arise”.

5. One of the CCOs was intended to be used as a Trust. An opportunity now exists for that use, as outlined in this report.
6. It is recommended that the Council approve the Trust being used for this purpose.

FINANCIAL IMPLICATIONS

7. Solicitors acting for Vbase have prepared a Trust Deed for the proposed “Canterbury Sports Museum Charitable Trust”. (**Attachment 1**).
8. All costs associated with the preparation and registration of the Trust as a charitable entity will be met by Vbase. The only cost to be incurred by the Council will be in respect of staff time both in the initial setting up of the Trust and in monitoring its operation as a CCO within the Council group.

LEGAL CONSIDERATIONS

9. It is proposed that Vbase Limited be the settlor of the Trust.
10. The Trust Deed provides that, at all times, there must be at least 4 trustees who are directly appointed by the settlor. Vbase may also appoint other people and organisations as “appointers”, each of them having the right to appoint a trustee.
11. The definition of a CCO in the Local Government Act 2002 includes an entity, such as a Trust, in which the Council has the right, directly or indirectly, to appoint 50% or more of the trustees.
12. Because Vbase has the right to appoint 50% or more of the trustees of the “Canterbury Museum Charitable Trust” this right is indirectly controlled by the Council. The Trust will therefore be a CCO.
13. Section 56 of the LGA 2002 requires the Council to use the special consultative procedure before it adopts a proposal to establish a CCO.

14. As part of the consultation process for the 2010/11 Annual Plan the Council consulted on a proposal that 3 non-active CCOs be established. The purpose of doing this without a specific activity for them to carry out was so that the Council was able to respond quickly to any opportunity that might arise. The alternative was to undertake a special consultative procedure each time an activity was identified and if it was determined that a CCO was the appropriate structure to use.
15. Following the completion of the special consultative procedure the Council resolved at its meeting on 21 June 2010 to:

“Approve the establishment of 3 Council controlled organisations to be used, following further Council approval, should appropriate opportunities arise”.
16. Concern was expressed at the time that by establishing non-active CCOs the Council was acting contrary to the provisions of the Local Government Act 2002 and that the CCOs should not be used to avoid consultation.
17. The Council has been advised by its strategic legal advisor, Simpson Grierson, that establishing CCOs as Shelf Companies or Trusts, without a specific purpose or activity in mind, does not breach the Act.
18. Further, the Council was assured that having a number of non-active CCOs available for use did not remove any control from Councillors. Staff undertook that any proposal to use one of the CCOs would be put to the Council for consideration and would be subject to the decision making and consultation processes in the LGA 2002. Approval would be sought for any financial support (capital injection or debt).
19. If the commencement of a particular activity triggered the Council’s significance policy, the use of the special consultative procedure would also need to be considered. The Council would be required by the Act to have regard to the views of the community.
20. The proposal to use a charitable Trust for the purpose referred to in this report is not contained in the 2009/19 LTCCP or 2010/11 Annual Plan. This means that the Council’s significance policy requires it to consider undertaking a special consultative procedure before it determines whether or not to approve the proposal.
21. In doing so, the Council may take into account the following matters:
 - (a) Achieving compliance with sections 77 and 78 of the Local Government Act 2002. This should be in proportion to the significance of the decision.
 - (b)
 - (i) Section 77 requires an assessment of all reasonably practicable options for achieving the objective of a decision.
 - (ii) The collection of sports memorabilia has been purchased by a generous benefactor. That person has required the collection to be managed by a charitable Trust for the benefit of the public.
 - (iii) On the death of the benefactor ownership of the collection is to pass to the Trust.
 - (iv) Vbase has accepted responsibility for creating and managing the Trust. So long as it retains control of the appointment of trustees, the “Canterbury Sports Museum Charitable Trust” will be a CCO.
 - (v) It is possible that another organisation could assume this role. However, Vbase is well placed to do the job given its involvement in event management in Christchurch, in particular at AMI stadium and CBS Arena which Vbase owns and operates.
 - (vi) This will also provide opportunities for the display of the collection.

- (vii) For these reasons it is open for the Council to conclude that the proposal in front of it is the preferred option for dealing with the matter.
- (c) (i) Section 78 requires the Council to consider the views and preferences of persons likely to be affected by, or to have an interest in, a matter.
- (ii) Those people who had an interest in the proposal to establish non-active CCOs had the opportunity to be heard as part of the special consultative procedure undertaken in March and April this year.
- (iii) A decision to use one of those CCOs for the activity set out in this report is unlikely to be controversial.
- (iv) The collection has been purchased for the benefit of the public and the trustees of the proposed Trust would be bound to manage the collection for that purpose.
- (d) (i) As settlor of the Trust, Vbase would be in a position to influence the decisions to be made with regard to the collection and the possible development of a sports museum in Christchurch.
- (ii) There is unlikely to be any objection to the steps proposed to achieve that outcome, particularly in view of the fact that neither Vbase nor the Council have been called upon to contribute financially to the purchase of the collection.
- (e) It is open for the council to decide not to undertake a further consultative process before giving its approval to the proposal. It would not be in breach of its obligations under the LGA 2002 or the Council's significance policy if it chose to take this approach.

STAFF RECOMMENDATIONS

It is recommended that the Council resolves that it:

- (a) approves the creation of the "Canterbury Sports Museum Charitable Trust" as a Council Controlled Organisation.
- (b) approves the use of one of the non-active Council Controlled Organisations to be established following a special consultative procedure undertaken in March and April 2010.
- (c) Authorises the General Manager of Corporate Services Group to sign any documentation that is required to be signed on behalf of the Council in order to achieve the outcomes sought in (a) and (b) above.

BACKGROUND

22. In December 2009 Vbase became aware that a New Zealand collection of sports memorabilia was to be offered internationally for sale.
23. Vbase approached the owner and was given an opportunity to investigate how the collection could be acquired for and on behalf of the public, in particular Canterbury residents. Tentative funding arrangements were secured.
24. In the event, a single benefactor has purchased the collection and will lend it to the charitable Trust that Vbase now wishes to create. Because Vbase is a CCO, the trust would also be a CCO under the provisions of the Local Government Act 2002.
25. As stated in the Trust deed, the purposes of the Trust are to provide educational and other benefits to the public of New Zealand by:
 - (a) Acquiring New Zealand sporting memorabilia for display and exhibition purposes;
 - (b) Developing and maintaining a sports museum for:
 - (i) the education and enjoyment of the public;
 - (ii) the exhibition of sports memorabilia, including visiting collections;
 - (iii) sporting and educational gatherings;
 - (iv) to promote sports and New Zealand's sporting achievements;
 - (v) academic and scholarly research and/or;
 - (vi) any other activity intended to foster a love of sports, sporting history or other cultural interest in the city of Christchurch; and/or
 - (c) To raise money for use by the Trust either to sponsor sporting events or individual sports people or to purchase additional items, collections and memorabilia for exhibition at the museum.
26. The purposes of the Trust are and will be charitable.
27. It is intended that on the death of the benefactor, ownership of the collection will pass to the Trust.
28. If the staff recommendations in this report are adopted, Vbase proposes to display the collection at AMI Stadium. It also intends, through the charitable Trust, to support and promote the development of a sports museum in Christchurch. Such a structure would protect the objective that this development would be for the public benefit.