

## 19. CHRISTCHURCH EARTHQUAKE MAYORAL RELIEF FUND



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<b>Officer responsible:</b>	Corporate Finance Manager
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### PURPOSE OF REPORT

1. The purpose of this report is to seek a Council resolution to formalise the terms of the Christchurch Earthquake Mayoral Relief Fund ("Mayoral Fund"), which was set up immediately after the 22 February 2011 earthquake as a special purpose fund to receive donations for the benefit of the people of Christchurch in the aftermath of the earthquake.

### EXECUTIVE SUMMARY

2. Following the 22 February 2011 earthquake the Council established the Mayoral Fund as a special purpose fund within its accounts to receive donations for Council activities and works for the benefit of the people of Christchurch in the aftermath of the earthquake and opened a separate bank account for the Mayoral Fund. As at 2 May 2011 \$2,526,405.97 had been received by the Mayoral Fund.
3. The Mayoral Fund is distinct from the Christchurch Earthquake Appeal Trust promoted by central government and the Canterbury Earthquake Heritage Building Fund, which operates under its own trust deed. It is also distinct from appeals promoted by other organisations such as the Red Cross and the Salvation Army.
4. The Mayoral Fund is currently being treated in the Council's accounts in the same manner as other bequests and special funds held by the Council. It is not recognised as a separate trust and currently the arrangements concerning the Mayoral Fund have not been formally documented.
5. It is proposed that the Mayoral Fund continue as a special purpose fund separately identified in the Council's accounts, but that the arrangements concerning the operation of the Mayoral Fund be formally documented by way of Council resolution. It is also proposed that the Mayoral Fund be used by Council resolution to fund activities that contribute to the rebuilding of the social and physical infrastructure of Christchurch, and either assist in remedying hardship suffered by individuals, groups, community organisations and businesses, or assist in protecting, repairing damage to or enhancing the physical fabric of the city. The Mayor would make these recommendations to Council.
6. It is also proposed that the documentation formalising the terms of the Mayoral Fund be submitted to the Inland Revenue Department to obtain confirmation of 'donee organisation status'. The advantage of achieving such status is that persons making donations may claim a tax credit and deduction in respect of their donations to the Mayoral Fund.
7. Staff have liaised with the Inland Revenue Inland Department in developing this report. The Department has confirmed that if the staff recommendation in the form contained within this report is adopted 'donee organisation status' will be granted for the Mayoral Fund.

### FINANCIAL IMPLICATIONS

8. The Mayoral Fund, including any income earned, will provide income to the Council in support of certain activities and works required as a result of the earthquake in accordance with the terms of the Mayoral Fund.

### Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?

9. No.

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**LEGAL CONSIDERATIONS****'Donee Organisation' Status**

10. From a tax perspective, the Council's principal concern is to ensure that tax incentives are available to donors in relation to donations to the Mayoral Fund. The tax incentives are as follows:
  - (a) Most individual taxpayers can claim a refundable tax credit each year calculated at 33½% of the amount of their monetary gifts of \$5 or more to 'Donee Organisations' for the year (capped at 33½% of the amount of their taxable income for the year).
  - (b) Any company (which generally includes any form of body corporate) can claim a concessionary tax deduction each year for monetary gifts of \$5 or more to 'Donee Organisations' for the year (capped at the amount of the company's net income, calculated without the deduction, for the year).
11. To be a Donee Organisation, the Mayoral Fund would need to be one of the following:
  - (a) An entity or trust that applies its funds wholly or mainly for charitable, benevolent, philanthropic or cultural purposes within New Zealand, or a "private institution" established and maintained exclusively for one or more of those purposes within New Zealand.
  - (b) A "public fund" established and maintained exclusively for the purpose of providing money for any one or more of the purposes within New Zealand referred to above.
12. IRD confirmation of Donee Organisation status is obtained to ensure that IRD will accept donation receipts issued by an organisation in support of tax credit or tax concessionary deduction claim made by donors.
13. Donee Organisations also benefit from a general gift duty exemption, i.e. gifts that would otherwise be subject to gift duty are exempt from such duty. However, a Donee Organisation's income (which does not include donations) is only exempt from income tax if the organisation is a "Tax Charity" or qualifies for some other income tax exemption – as discussed below.
14. Preliminary discussions with the Inland Revenue Department indicate that a special purpose fund within the Council's accounts set up for the purposes specified in the staff recommendation are likely to be accepted as being for charitable, benevolent, philanthropic or cultural purposes and thus qualify for 'Donee Organisation status'.

**Exemption from Income Tax**

15. A secondary concern is that any income of the Mayoral Fund (e.g. interest received on funds held in the Mayoral Fund bank account is not subject to income tax. However, income of the Mayoral Fund might not be significant if donations to the fund are readily distributed or applied for the purposes of the Mayoral Fund.

**Options****Option 1 Special Purpose Fund**

16. The preferred option would be to formalise the terms of the Mayoral Fund as a special purpose fund, not a trust, by way of resolution, and then submit that documentation to IRD for confirmation of "Donee Organisation" status.

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17. Advantages of this option are as follows:

- (a) The documentation for the Mayoral Fund would be less formal and the Mayoral Fund can be established quickly.
- (b) The Mayoral Fund would not need to be strictly limited to charitable purposes – it could extend to other "benevolent", "philanthropic" and "cultural" purposes".
- (c) Based on previous experience, IRD should be willing to provide confirmation of 'Donee Organisation' for the special purpose fund, possibly subject to a written commitment that concessionary tax deductions would not be sought by the Council or any CCO of the local authority for donations to the Mayoral Fund. (An IRD number would be allocated to the Mayoral Fund, but for IRD internal administration purposes only.)
- (d) It would not be necessary to apply to register the Mayoral Fund with the Charities Commission under the Charities Act. This would not have any material adverse tax consequences, on the basis that:
  - (i) Any income of the Mayoral Fund would be derived by the Council, but not as a trustee, and therefore tax-exempt under the general exemption from income tax for local authorities.
  - (ii) Income of the Mayoral Fund (other than donations) is not expected to be significant.
- (e) The Mayoral Fund would not constitute a CCO, for the purposes of the Local Government Act.
- (f) The status of the Mayoral Fund as a special purpose fund, as opposed to a charitable trust, and the fact that the Mayoral Fund is not registered under the Charities Act is not expected to have a material impact on the level of donations to the Mayoral Fund. Whilst the Mayoral Fund could not be marketed as a "registered charity", it could still be marketed as a "Donee Organisation".

**Option 2 Separate Trust Fund**

- 18. The other option that has been considered would be to formalise the terms of the Mayoral Fund as a separate trust. Amongst other things, however, this option is not preferred because, unless the trust would not be controlled by the Council, it would constitute a CCO.
- 19. In contrast with the first option:
  - (a) The documentation for the trust would be more formal.
  - (b) The operation of the Mayoral Fund would be more formal.
  - (c) The Mayoral Fund would need to be strictly limited to charitable purposes, in order to be accepted for registration under the Charities Act and tax exempt.
  - (d) The documentation would need to be submitted to the Charities Commission, for registration under the Charities Act, and the IRD would also need to confirm "Donee Organisation" status. Whilst it is expected that both agencies would be willing to prioritise this matter, this is likely to take more time than just having to deal with the IRD.
  - (e) Upon registration under the Charities Act, any income of the Mayoral Fund would qualify for Tax Charity income tax exemption, but this would require some changes in relation to the administration of the account for the Mayoral Fund.
  - (f) A trust is likely to constitute a CCO for the purposes of the Local Government Act 2002.

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- (g) The Mayoral Fund could be marketed as a "registered charity", as well as a "Donee Organisation", but as noted above it is not expected that this would have a material impact on the level of donations to the Mayoral Fund.

**Local Government Act 2002**

20. Establishing the Mayoral Fund has been an initiative developed in response to the 22 February 2011 earthquake. The Canterbury Earthquake Response and Recovery Act 2010 defines "Canterbury earthquake" as being "the earthquake that occurred on 4 September 2010 in Canterbury, and includes all of its aftershocks". The initiative therefore falls within the purposes of that Act. Section 88(1) of the Canterbury Earthquake Recovery Act 2011 repeals the earlier Act. However, section 88(2) states that the Orders in Council made under the 2010 Act remain in force. The Canterbury Earthquake (Local Government Act 2002) Order 2010 therefore still applies to the decision to be made by the Council in respect of the Mayoral Fund.

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

21. Yes, see above.

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

22. No.

**Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?**

23. No.

**ALIGNMENT WITH STRATEGIES**

24. No.

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

25. No.

**CONSULTATION FULFILMENT**

26. The Canterbury Earthquake (Local Government Act 2002) Order 2010 states that the Council is exempt from certain decision-making requirements in the Local Government Act 2002, to the extent that a decision is directly or indirectly necessary or desirable to further one or more of the purposes of the Canterbury Earthquake Response and Recovery Act 2010.
27. This exemption includes the requirement in Section 78 of the LGA 2002 to consider the views and preferences of persons likely to be affected by, or who have an interest in, the decision.
28. The decision to be made by the Council is necessary to assist with the response to the 22 February 2011 earthquake. As indicated earlier, for that reason it falls within the purposes of the Canterbury Earthquake Response and Recovery Act 2010 and the Council is entitled to rely on the exemptions allowed by the Canterbury Earthquake (LGA 2002) Order.

**STAFF RECOMMENDATION**

It is recommended that the Council resolves as follows:

- (a) To approve the establishment and continued operation of the Christchurch Earthquake Mayoral Relief Fund as a special purpose fund within the Council's accounts on the terms recorded below.

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- (b) That the Christchurch Earthquake Mayoral Relief Fund was established, and will continue to be maintained, by the Council as a “public fund” (as described in section LD 3(2)(d) of the Income Tax Act 2007) exclusively for the purpose of providing money for any one or more charitable, benevolent, philanthropic or cultural purposes related to and in particular to provide relief to the people of Christchurch from the adverse effects of the 4 September 2010 and 22 February 2011 earthquakes, and associated aftershocks, by providing money for the any activity or work required as a result of those events that:
- (i) contributes to the rebuilding of the social and physical infrastructure of Christchurch, and
  - (ii) assists in:
    - remedying hardship suffered by individuals, groups, community organisations and businesses, and/or
    - protecting, repairing damage to or enhancing the physical fabric of the city.
- (c) That the General Manager Corporate Services be delegated authority to:
- (i) Apply to the Inland Revenue Department to seek confirmation of ‘donee organisation status’ for the Christchurch Earthquake Mayoral Relief Fund;
  - (ii) Solicit and receive donations to the Mayoral Fund from the public;
  - (iii) Ensure that neither the Christchurch City Council, nor any entity controlled by the Christchurch City Council, will be making donations to the Mayoral Fund in respect of which any tax incentive will be claimed;
  - (iv) Issue appropriate receipts for all donations received to the Mayoral Fund;
  - (v) Invest the funds held by the Mayoral Fund in accordance with standard Council policies and procedures providing that the General Manager Corporate Services ensures:
    - All money invested from this Mayoral Fund must be used exclusively for the purposes described in paragraph (b);
    - That if there is an inconsistency between this resolution and the Council’s investment policies, this resolution prevails; and
- (d) That any proposal to apply any of the monies held by the Christchurch Earthquake Mayoral Relief Fund to any of the above purposes be subject to Council approval on the Mayor’s recommendation.
- (e) That the General Manager Corporate Services report to the Council as part of the Quarterly Performance Report the amount of donations received by the Christchurch Earthquake Mayoral Relief Fund, the amounts disbursed, and the purposes benefited, in the quarter to which the report relates, and the Mayoral Fund balance as at the end of that quarter.