

Brief to Central Otago District Council for discussion on 12 August 2026

Legal advice - privileged

From: Wendy Aldred KC and Andrew Lovelock, Gallaway Cook and Allan

Date: 5 August 2026

Purpose of this paper

1. The purpose of this paper is to brief the Council in relation to the land known as the Cromwell Endowment Land (**Land**), the nature of the issue that has been identified relating to the manner in which that land is held, and the steps available to Council.

Background

1. On 3 November 1881, a Crown Grant of land was made by the Governor to the Mayor, Councillors, and Burgesses of the Borough of Cromwell, their Surveyors and Assigns):

... upon trust as an endowment in aid of the Borough funds.
2. It is common ground that until the reorganisation of local government in 1989, the Land remained vested in the corporation of the Cromwell Borough Council and that any income generated by it could be used for the purposes of the Cromwell Borough.
3. The issue that has been raised for consideration is whether, following the dissolution of the Cromwell Borough Council effected by the Local Government Reorganisation Order 1989, the land is:
 - a. held pursuant to a statutory trust as an endowment by the CODC for the benefit of the Cromwell area only (referred to as the “modern day township of Cromwell”); or
 - b. held pursuant to a statutory trust as an endowment by the CODC for the benefit of the Central Otago district as a whole, so that income derived from it could be applied to district wide purposes.
4. In short, the advice received from the Council’s lawyers (GCA) over a number of years indicated the former, and advice recently provided by Wendy Aldred to Council indicated the latter approach.

The legal issue

5. The legal issue identified above turns substantially on the correct interpretation of the Crown Grant (and specifically the reference to the land being held “upon

trust as an endowment in aid of the Borough funds”) in light of the application of clauses 77 and 78 of the Local Government Reorganisation Order 1989:

77 All property, real and personal, vested in the corporation of any former authority [including the Cromwell Borough Council] and situated in the Central Otago District is hereby vested in the corporation of the [newly established] Central Otago District Council, subject to all existing encumbrances.

78 Any reference, express or implied, to any former authority in any instrument or other document, or in any entry or record made in any register in relation to any property vested in the Central Otago District Council by clause 77 of this order shall, unless the context otherwise requires, be read as a reference to “The Central Otago District Council”.

6. In short, the approach that has been advised by GCA is:
 - a. That the term “subject to all existing encumbrances” in cl 77 preserves the statutory trust created by the Crown Grant (being a trust in aid of the Cromwell Borough funds only); and
 - b. The usual rule in cl 78 (which would require the references to the Cromwell Borough in the Crown Grant to be read as referring to the CODC) does not apply because of the operation of the proviso “unless the context otherwise requires.”
 - c. In the case of the Crown Grant, the relevant context is the reference in the Crown Grant to the Cromwell borough as beneficiary of the statutory trust. This context requires that the Crown Grant continue to be read as creating a trust in favour of the Cromwell borough/township only, so that income from the Land can be applied only for the benefit of the modern day township of Cromwell.
7. The approach preferred in Ms Aldred’s advice is as follows:
 - a. That the term “subject to all existing encumbrances” in cl 77 preserves the statutory trust created by the Crown Grant (that the Land remain held on trust as endowment land); but
 - b. The usual rule in cl 78 (requiring references to the former Cromwell Borough to be read as referring to the CODC) applies as the relevant context does not otherwise require;
 - c. The original purpose of the endowment has been superseded since 1989 by the new system of local government, which is premised on a single,

larger authority (CODC) having control over all of the real and personal property of the former authorities and applying that property and any associated income in accordance with its responsibilities for all wards and districts within the Central Otago district. This provides the relevant statutory context, which, in terms of cl 78, is consistent with reading the Crown Grant as directing the Land to be held on trust as an endowment in aid of the CODC funds. The nature of the grant itself, which appears to have been simply a means of supplementing the Borough's rates take, also supports this interpretation.

Proposed approach

8. Neither Ms Aldred nor GCA consider that the legal issue described above is completely straightforward, or that there is no basis for arguing the other's approach.
9. Given that there are two possible interpretations of the Crown Grant as set out above, the Council may consider that it is prudent to obtain clarification of the correct approach, particularly given the increase in value of the Land following rezoning.
10. The appropriate route would be an application to the High Court for a declaration as to the correct interpretation of the trust created by the Crown Grant.
11. In the event that the Court were to favour the view that the Land is held for the benefit of the district as a whole following reorganisation this would give the Council the necessary assurance of its position before taking any steps to apply income from the Land for purposes that would benefit areas other than Cromwell.
12. In the event that the Court were to favour the opposite conclusion, then the Lands would remain held for the benefit of the Cromwell area only. If Council then wished to give consideration to changing the purposes for which the endowment land or income derived from it may be used so that this significant asset could be applied for the benefit of the broader district, it could take steps to seek a change of purpose under s 140 of the Local Government Act 2002 by applying to the Minister (any decision to do this would, we assume, need to be preceded by a process of consultation).
13. The writers anticipate discussion at the meeting of:
 - a. Further detail of the relevant legal issue as to interpretation of the Crown Grant.

- b. The relevant procedural steps in the event an application to the Court is made, costs, etc.