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BANNOCKBURN ROAD – ENDOWMENT LAND

1. You have asked for advice regarding whether or not income from the proceeds of sale of certain endowment land situated at Bannockburn Road, Cromwell can be applied district wide or whether such income is required to be applied to the Cromwell township.

Background

2. Crown Grant 20740 was issued pursuant to the Municipal Corporations Act 1876 and is embodied in record of title OT58/77. The Crown Grant was to The Mayor Councillors and Burgesses of the Borough of Cromwell for an estate in fee simple in Trust as Endowment in aid of Borough Funds. Please see **attached** a copy of the Crown Grant which we have obtained from Archives NZ.
3. The balance land remaining from the Crown Grant is held in record of title 894732 (the current day title). The land is legally described as Lot 5 DP 454268, Lots 3 and 4 DP 526140 and Section 2 Survey Office Plan 526035.
4. For the sake of completeness, the parcels described as Lot 5 DP 454268 and Section 2 SO Plan 526035 did not form part and are excluded from the above mentioned Crown Grant. Lot 5 comprises a small parcel of land (0.0151ha) adjoining Lot 6 322226 (shown highlighted green on DP 454268 and Section 2 SO Plan 526035 (see second **attachment**) comprises an area of 1.3708ha. This parcel is an area of unformed legal road that was stopped in 2018.

Section 140 and 141 of the Local Government Act 2002

5. Section 140 and 141 of the Local Government Act 2002 apply to property or part of a property vested in a local authority in trust or as an endowment.
6. As you are aware, section 140(4)(b) of the Local Government Act 2022 states that,
 - 6.1 unless expressly prohibited by the instrument that vested the property in the local authority,

- 6.2 a local authority may sell or exchange a property vested in Council as an endowment and
- 6.3 use the proceeds of sale for a purpose identified by the local authority in accordance with section 141.
- 7. Section 141(1) states that a local authority must not exercise the power of sale in section 140(4)(b) unless the proposed use of the proceeds of sale of the property...is consistent with the purpose of the endowment.
- 8. Section 141(3) goes on to say that where a local authority is subject to reorganisation, the proceeds of sale, must be applied to the district or districts of the new local authority or authorities arising from the reorganisation of which the local authority formed part.

Application of section 141(3)

- 9. Section 141(3) envisages a current reorganisation so is not relevant (see *Reid v Tararua District Council* (HC, Wellington, 2004) at para 126
- 10. By way of brief background and supporting the observation in *Reid*, the Local Government Act (Otago Region Reorganisation Order 1989) recorded the following:
 - 10.1 all property became vested in the Central Otago District Council subject to all existing encumbrances (clause 77 of the Order); and
 - 10.2 any reference, express or implied, to any former authority in an instrument or other document, or in any entry or record made in any register in relation to any property vested in the CODC by clause 77 of this Order shall, unless the context otherwise requires, be read as reference to the CODC (clause 78 of the Order).
- 11. As noted in previous advice provided by this firm to Council, the combined effect of clauses 77 and 78 combined with the fact that section 141(3) envisages a current and a not a past reorganisation means that the endowment land is now vested in the Central Otago District Council subject to the same trust as was created by the Crown Grant of land to the Cromwell Borough.

Terms of the Crown Grant

- 12. As noted at paragraph 2 above, the terms of the Crown Grant are for an estate in fee simple in Trust as Endowment in aid of Borough Funds.
- 13. We note that there is no prohibition on the sale of the property (so it is open to Council to sell the land in accordance with section 140 and section 141 of the Local Government Act 2002).
- 14. The question arises across what area is income from the endowment able to be applied to? In terms of the strict language of the Crown Grant that would arguably be defined by the legal boundaries of the Borough of Cromwell as they existed at the time of the Grant.
- 15. The 2015 advice provided by this firm to Council suggested that it would be reasonable to infer that it was intended to benefit the area that can be regarded as the modern-day town

of Cromwell. It may be a useful exercise to ascertain if the legal boundaries of the borough of Cromwell at the time of the Grant (November 1881) can be established but given the town has been relocated and has expanded significantly it would seem reasonable to take the position suggested in the 2015 advice that funds can be applied to the Cromwell township.

16. I also note the 2015 advice canvassed the issue of what the funds can be spent on. If you consider you need any additional advice/guidance on that please let me know.
17. Of course, as you will be aware, it will be necessary that any proceeds realised from the disposal of the Bannockburn Block are held and accounted for separately by Council. In this regard it is helpful to keep in mind that the land is held on trust for the purposes for which it was endowed.
18. With reference to paragraph 4 above, the areas of land that did not form part of the original Crown Grant comprise approximately 2.65% of the overall land area. On a strict approach that would suggest that 2.65% of any sale proceeds could be applied on a district wide basis. That might cause an unwanted accounting complexity but I wanted to mention that for the sake of completeness.
19. Please let me know if you want to discuss any of the issues raised further.

Yours faithfully

GALLAWAY COOK ALLAN



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