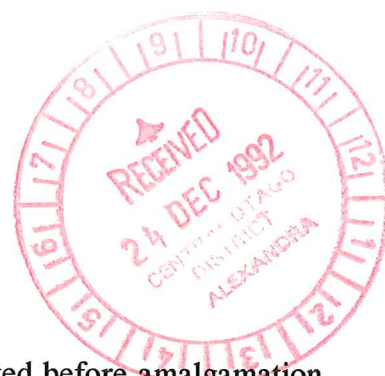


22 December 1992

The General Manager,
Central Otago District Council,
P.O. Box 122,
ALEXANDRA

FAXED



RE : ENDOWMENT LAND - YOUR REF: 20/1/1

We refer to your inquiry as to the beneficiary of endowments created before amalgamation.

The manner in which endowments are expressed can vary considerably. Consequently it is probably not possible to entirely predict the position with individual endowments. Therefore, our opinion which follows may require qualification in specific cases.

Our opinion is that while all land that was vested in a former authority situated in the Central Otago District is now vested in the Central Otago District Council the beneficiary of an endowment may not necessarily be the District as a whole but may still be restricted to the former area in terms of the trust.

Clause 77 of the Local Government Act (Otago Region Reorganisation Order 1989) sets out that all property becomes vested in the Central Otago District Council subject to all existing encumbrances.

Clause 78 of the Reorganisation Order headed "Title to Property" provides:-

"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 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"."

We consider the combined effect of clauses 77 and 78 is that endowment land is now vested in the Central Otago District Council subject to the same trust as was created with the original grant of the land to the former authority. There are three reasons for that view:-

1. The land has been vested in the Council subject to "all existing encumbrances" (clause 77). The expression "encumbrances" is wide enough to include trusts under which the land is held. If the trust is expressed as being for a former authority then to the extent that it continues to be practicable to do so the object of the trust remains as if the former authority still existed. It is the encumbrance that has significance as the vesting is made subject to existing encumbrance.

2. It could be argued that as clause 78 sets out that any reference to a former authority in relation to any property that becomes vested in the Council shall be read as a reference to "The Central Otago District Council" then as in the example referred to by you the endowment would be read as being in aid of the Central Otago District Council funds not borough funds. We do not consider that to be the position as clause 78 also sets out that references shall be read as being to the Central Otago Council "unless the context otherwise requires".

In our view, where the land in question was granted to the former authority subject to some specific trust (e.g as an endowment in aid of the borough funds) then the context requires that the reference to "borough" should continue to be read as if the former authority still existed.

3. There may also be endowments subject to trusts which are expressed to be in favour of a particular group or area and not expressed by reference to a former authority. Quite clearly although the land becomes vested in the Council it is not provided in clause 78 that the beneficiary of such trusts should be read as the Council. We consider there should be consistency in that regardless of whether a trust is expressed by reference to a former authority or otherwise the trust should continue the same benefit as occurred prior to amalgamation.

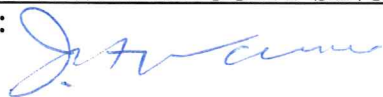
As referred to above our comments are of necessity to some extent generalisations. When considering what may be done with the proceeds of a particular piece of land it is necessary to look to the instrument initially granting the land. Often the land is granted pursuant to an Act which spells out a clear trust. The memorial on the Certificate of Title does not necessarily repeat the words of the Act in full. Therefore some research may be required before dealing with each piece of land. We do note that it has turned out that such research in relation to the land referred to in your letter (CT 407/ 117) established that the original grant of the land (document reference 58/77) confirmed that the land which was granted under the Municipal Corporations Act 1876 was a grant in the same terms as appears on the Certificate of Title.

To the extent that there may be complications in having to consider each piece of land on a case by case basis the Council may wish to consider promoting a local bill which would alter the various trusts to a single trust whereby the land is held for the benefit of the district as a whole. A similar exercise was undertaken in recent years by the Dunedin City Council.

We note your reference to clause 172 of the Reorganisation Order. In our view that clause would not affect the position relating to lands as it appears to be confined to special funds.

In summary in our opinion the beneficiary of an endowment does not necessarily become the Central Otago District as a whole and consistent with that, if an endowment is "for municipal purposes" or similar, the beneficiary is also restricted to what was the former municipality.

Yours faithfully,
GALLAWAY HAGGITT SINCLAIR & PARTNERS
 per:



J.A. Walker
 EAS9790