gallaway cook allan
LAWYERS
incorporating blake horder gowing

27 May 2008

The Property Manager
Central Otago District Council
P O Box 122
ALEXANDRA

For [redacted]

[redacted]

DUNSTAN ROAD - ENDOWMENT

We refer to your email and the background information supplied by [redacted] in respect to the questions raised in your email, we advise as follows:

1. Can the land be sold and do Sections 140 and 141 Local Government Act 2002 ("the Act") apply?

   As this is endowment the land, Sections 140 and 141 of the Act will apply. The Sections authorised sale but set out what might be described as "preconditions". The main ones of these are that the proposal to sell has been identified in the LTCCP, that the LTCCP further identifies the use to which the proceeds will be put and that the LTCCP has been adopted. As to what level of information is to be provided in the LTCCP, is unclear but by way of direction, we refer to the statement of the Auditor General, from the papers you provided, as follows:

   > "... we also think that an LTCCP should contain a description of the nature and type of endowment properties that are to be sold or exchanged to give members of the public enough information on which to comment."

   We have not reviewed the LTCCP in respect to this property or in relation to endowment property generally, for this opinion, but understand that possibly some work may need to be done to comply with the requirements set out above.

As from May 2008 our Wanaka office (currently known as Blake Horder Gowing) will trade under the Gallaway Cook Allan name

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Further it would appear that the Courts have added to the "preconditions" through the consideration by Council of the purpose for which the endowment is held. In the case of Waitara Leaseholders Association v. New Plymouth District Council (also referred to us by you) the Court directed that Councils must also consider:

(a) is the sale of the asset a prudent means of discharging the purposes of the Trust;

(b) if so, how is the best price realised.

In our view it may well be a comparison between the use of the current assets held, with the use of the future asset to be held, that may assist in answering questions (a) and (b). Hence, if the proposal leads to a much greater enhancement of the purpose of the Trust, then it would seem logical for Council to proceed.

2. What are the restrictions on the use of the proceeds and in particular of the purpose "Municipal Purposes"?

Section 140 (3) of the Act sets out clearly that endowment property:

> "must be retained fort he purpose for which the property was vested in".

"Property" is defined effectively as any estate or interest in real property (i.e. land). Section 141 requires that:

> "the proposed use of the proceeds of sale of the property....... is consistent with the purpose of the endowment".

In our view a combination of these two sections place a restriction on the types of use to which the proceeds can be put. We believe the proceeds must, in some way, be used for the purchase of an interest in real property or, at least to the enhancement (in value) of real property held by Council for the same endowment. Albeit, as is discussed below, it may well be that a "Municipal Purpose" might easily include for instance, upgrade of water supply, we do not believe the proceeds of sale of an endowment property could be used for this purpose. This is because it has no relevance to the ongoing holding of property for the endowment.

It is further worth noting that endowment property value is generally identified separately in the accounts of Councils. In our view, this reinforces the view of retention of value under the endowment umbrella.

We believe the concept of retention of value is further reinforced by the requirement for Council to put into its LTCCP, the use to which proceeds are to be put, to enable public scrutiny of the process.

As to the issue of "Municipal Purposes", given the changes in the 2002 legislation (as to what a Local Authority was entitled to do and be involved with), it is our view the term can now be couched in very wide terms. Effectively it would appear that it is any purpose, which a Council is entitled to do in a municipal (local government) context.

This could mean that any genuine purpose of Council will be covered. However as noted above we believe that the types of purpose in respect to endowment lands are limited to the endowment requirements of Sections 140 and 141 as set out above. Hence the purpose must have some relevance to the land or an estate or interest in the same. This may well mean that Council will have to consider carefully structures it should have in place, to deal with proceeds of sale of endowment land.

We trust that this is of assistance to you.

Yours faithfully
GALLAWAY COOK ALLAN

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