

**TO: FINANCE AND POLICY**  
**FROM: DIRECTOR OF FINANCE**  
**MEETING DATE: TUESDAY 1 AUGUST 2017**

## IN COMMITTEE

*Reason for Exclusion:*

*Local Government Information and Meetings Act 1987 –*

(7) *Other reasons for withholding official information:*

*(i) Enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)*

<b>OAG REPORT</b>
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**Report Prepared by:** Dean Johnston, Director of Finance and Corporate Services

### SUMMARY

The OAG has investigated the acquisition of Rugby Park and advise that Council's intent was complied with.
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### RECOMMENDATIONS

That this report be received.

### IMPLICATIONS

1.	<i>Has this been provided for in the Long Term Plan/Annual Plan?</i> Yes
2.	<i>Is a budget amendment required?</i> No
3.	<i>Is this matter significant in terms of Council's Policy on Significance?</i> No
4.	<i>Implications in terms of other Council Strategic Documents or Council Policy?</i> No

5.	<i>Have the views of affected or interested persons been obtained and is any further public consultation required?</i> No
6.	<i>Has the Child, Youth and Family Friendly Policy been considered?</i> Yes

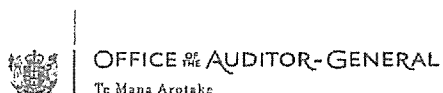
**REPORT**

Following the acquisition of Rugby Park, Mr Tribe made a complaint to the Auditor General about the process that was followed.

Mr J Keate of the OAG has investigated this complaint and provided the attached report on it.

In summary, his view is that whilst more clarification and information could have been provided to Council throughout the process, the outcome and decision preserved Council's intention as reflected in the consultation.

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25 July 2017

Mr Richard King  
Chief Executive  
Invercargill City Council  
Private Bag 90104  
Invercargill 9840

Dear Mr King

### **INVERCARGILL CITY COUNCIL COMPLAINT ABOUT ACQUISITION OF SOUTHLAND OUTDOOR STADIUM**

We were asked by an Invercargill City ratepayer to inquire into the Council's arrangements in relation to the Southland Outdoor Stadium ("Rugby Park" or "the Stadium").

This letter sets out the issues and concerns the ratepayer raised with us, the background information, and our comments. We will send a copy to the ratepayer.

#### **Issues Raised**

The ratepayer is concerned that the arrangement the Council entered into in mid-2015 to take ownership of Rugby Park differed in some respects from the conditions in the Council's February 2015 resolution about the arrangement.

The particular issues that the ratepayer has raised are:

1. Whether the Council knowingly authorised a variation from the conditions in the resolution before entering into the arrangement.
2. Whether the Council has taken on a liability in the form of a pre-paid lease that was not part of the Council resolution.

#### **Background**

In 2014 the Council considered options for securing the future of Rugby Park. This followed discussions with various parties involved about how the debts of the owner of Rugby Park, the Southland Outdoor Stadium Trust (SOST), could be paid. One of SOST's debts was to Rugby Southland.

#### *Consultation*

The Council consulted on three options in February 2015. The Council's preferred option involved the Council:

- paying SOST \$400,000 so that SOST could settle its debt with the Community Trust of Southland;
- assuming ownership of Rugby Park and responsibility for its ongoing maintenance with operating costs of around \$290,000 per annum;

- assuming responsibility for a debt of approximately \$740,000 owed by SOST to Rugby Southland, to be reduced in exchange for free office rental to Rugby Southland at a rate of \$35,000 per year.

*The Council resolution and conditions*

At its 24 February 2015 meeting, the Council considered responses from the community to its proposals and a report from the chief executive. After considerable discussion, the Council resolved to donate \$400,000 to the SOST on certain conditions. The conditions referred to in the Council resolution were:

- SOST using the donation to repay the Community Trust of Southland loan in full and final settlement;
- The Invercargill Licensing Trust making a donation to repay the Pacific Dawn Limited loan in full;
- SOST transferring the Stadium ownership to the Council or its nominee;
- The Council selling by licence the rights to half of the corporate boxes to Rugby Southland for a term sufficient to extinguish the current debt owed by SOST to Rugby Southland;
- Rugby Southland entering into a lease arrangement with the Council for use of the Administration offices at the Stadium at a yearly rental of \$35,000 per annum;
- The existing management agreement involving Rugby Southland and the Stadium be extinguished.

The conditions had been proposed by the Chief Executive in his report to the Council meeting.

*Finance and Policy committee*

The Finance and Policy committee received updates on the matter at meetings in March and April 2015 as discussions occurred with the various parties about the conditions that involved them.

*March 2015 meeting*

At its March 2015 meeting, the Committee was advised that Invercargill Venue and Events Management Limited would be contracted to manage Rugby Park if the conditions in the Council's February resolution were satisfied and the transfer of ownership occurred. The Director of Finance and Corporate Services advised that all parties to the agreement needed to meet to discuss the conditions that affected them, and that not all parties had reached the point where the Council could take control of Rugby Park at that time.

*April 2015 meeting*

At its 29 April 2015 meeting, the Committee was advised that:

- SOST had resolved to wind up its trust and start the process of transferring the Stadium to the Council; and
- the City Solicitor had prepared a Deed of Arrangement that authorised all parties to meet the Council's resolution (The Deed was appended to a report to the Committee from the Director of Finance and Corporate Services).

We have been told that the minutes of the meeting record advice to the Committee that several meetings had been held between the parties, and that the Director of Finance and Corporate Services gave an overview of the lease arrangements that had been negotiated and what each party would receive from the arrangement.<sup>1</sup>

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<sup>1</sup> The Council's legal advice noted later in this letter sets out the relevant extract from the minutes.

The report to the Committee noted that the Deed of Arrangement was with the other parties for consideration but no problems were expected. The report asked the Committee to recommend that the Council approve the Deed of Arrangement, subject to minor amendments, and authorise that it be signed.

We have been told that:

- most councillors were present at the 29 April 2015 meeting of the Finance and Policy Committee, and the Committee resolved that the report be received;
- the Council approved the above report with some amendments (unrelated to Rugby Park) at its meeting on 5 May 2015 in the public excluded part of that meeting.

We have not seen the minutes of the 29 April 2015 Finance and Policy committee meeting or the records of the Council's 5 May 2015 meeting.

#### *The Deed of Arrangement*

We have been given a copy of the Deed of Arrangement that the council entered into with relevant parties to implement the donation to SOST and the related conditions.

The terms of the Deed of Arrangement required that all debts of SOST be settled before the Council approved its payment of \$400,000 and the transfer of ownership of the Stadium to it.

In terms of SOST's debt to Rugby Southland, the Deed of Arrangement provided for:

- SOST to enter into a lease with Rugby Southland, on terms to be agreed and approved by the Council, for the use of the administration offices of the Stadium for a term of 16 years at a rental of \$55,000;
- the rental payable would be sufficient, by prepayment of rental by Rugby Southland by exchange of cheques, to repay any debts owed by SOST to Rugby Southland as at 31 March 2015.

In May 2015, the Council proposed to the Invercargill City Charitable Trust Board that it accept ownership of Rugby Park. This was in line with one of the conditions in its February 2015 resolution - that the SOST transfer ownership of Rugby Park to the Council or its nominee.

The final arrangement involved the Council paying \$400,000 to Invercargill City Charitable Trust for on-payment to SOST. Ownership of Rugby Park then transferred from SOST to the Invercargill City Charitable Trust on 8 July 2016. Invercargill Venues and Events Management has been contracted to manage Rugby Park for \$250,000 per year.

#### **The differences between the resolution, the consultation document, and the final arrangement**

The option consulted on was slightly different than the Council resolution in terms of the debt owed by SOST to Rugby Southland, and also from the final arrangement as reflected in the Deed of Arrangement.

We have summarised these differences in a table appended to this letter.

#### **The Council's legal advice**

We asked the Council to review its decisions concerning Rugby Park and comment on any differences between the resolution and the final arrangements. The Council sought legal advice on the matter.

The legal advice sets out the background to the Council's decisions and some conclusions. The legal advice explains the differences noted above as follows:

- "The Consultation document and Council minutes of the 24 of February 2015 differ in respect of the extinguishment of the SOST debt. The consultation document provides for the SOST debt to be

repaid by Rugby Southland paying the rental for its administration office at the rate of \$35,000.00 pa. ... The Council minutes provide for the extinguishment of debt by Rugby Southland paying for the lease and licence rights for a sufficient term.

- The Deed of Arrangement differs from the Council Resolution of the 24th of February, as it provides for Rugby Southland to prepay rental on the administration office's for a term of 16 years (subject to adjustment) to ensure that the prepayment of rental was sufficient to repay the indebtedness of the SOST to Rugby Southland and consequently no ongoing annual payments for Rugby Southland."

In terms of reasons for the changes, the legal advice notes:

- The Deed of Arrangement preserved the intention of the Council resolution, as the prepayment of rental by Rugby Southland to SOST extinguished the debt of SOST.
- The difference in the rental of \$35,000.00 pa to \$55,000.00 pa came from a re-assessment of the rental for the premises adjusted for a 16 year term to ensure extinguishment of the debt and forward viability of Rugby Southland.

In terms of the Council's awareness of these changes, the legal advice notes:

- "The Deed of Arrangement was provided to Council in the Report by the Director of Finance and Corporate services to the Finance Committee.
- The Finance and Policy Committee resolved that the Report be received, the minutes of the Finance and Policy Committee were then provided to the Council Meeting of the 05/05/2015 who resolved to approve the minutes.
- Notwithstanding the earlier resolution of Council, the Council Meeting of 05/05/2015 approved the Finance Committee Minutes which included the Deed of Arrangement. Consequently Council in its resolution of 05/05/2015 approved the terms of the Deed of Arrangement and to the extent it clarified its resolution of 24 February 2015 that it accepted it was doing so. It is assumed for the purposes of s 79 LGA 2002, that the Council in approving the Finance Committee Minutes did not require further consultation, as it was satisfied the views of the committee were known."

#### **Our comments**

It is clear that the debt between SOST and Rugby Southland needed to be resolved as part of the arrangement. Councillors were aware of this and had consulted the community on it. However, it is difficult to assess from the Council records whether Councillors were aware of the differences between the conditions in the resolution approving the arrangement and the final arrangement entered into. The differences concern how the debt would be repaid, the amount of the debt, and the time period.

A substantive discussion about the future of Rugby Park occurred at the meeting of 24 February 2015, when the Councillors considered the outcome of the consultation process and the results of their own research. The minutes confirm that Councillors were aware of the need for the debt to be addressed as part of the arrangement. This was also apparent in the material about option 2 in the consultation document, which referred to Council assuming responsibility for the debt of approximately \$740,000 and noted that the Council would not be receiving rent from Rugby Southland for its use of the Stadium.

The Chief Executive's report to the Council meeting does not explain why the condition about repaying the debt through selling half of the corporate box licenses had been included. The minutes of the meeting note that the Chief Executive answered some questions from Councillors. One of the answers referred to the licences to the corporate boxes:

*"The licenses to the corporate boxes will be placed in Rugby Southland's books to replace the ? [debt].<sup>2</sup>The advice came from the City Solicitor today."*

The reports to the Finance and Policy Committee on Rugby Park are brief and do not address the different options to address the debt. We have not seen any record of those different options being discussed by the Finance and Policy Committee or the Council, nor any record of the Council's formal approval of the Deed of Arrangement. That said, the minutes of the Finance and Policy Committee meeting of 29 April 2015 do refer to the Director of Finance and Corporate Services giving an overview of the lease arrangements that had been negotiated and what each party would receive from the arrangement.

*The increase in the annual rental amount*

As noted above, option 2 of the consultation estimated the amount of the debt to be \$740,000, and proposed that the Council assume responsibility for it in exchange for Rugby Southland having "free office rental" at a rate of \$35,000 per annum. This would have meant the debt was repaid over a 21 year period.

In the Deed of Arrangement, the annual rental amount increased to \$55,000.00 per annum and a term of 16 years was specified (Rugby Southland's 2014 financial statements state that the amount of the debt was \$880,000).

We have not seen any explanation or advice to Councillors on this point. The significance appears to be that the debt that the Council took responsibility for as part of the arrangement to save Rugby Park is larger than as estimated in the consultation document.

*The effect of the arrangement to address the debt*

The debt between SOST and Rugby Southland has been addressed as part of the Deed of Arrangement and before the transfer of ownership of Rugby Park to the Council (and then to Invercargill City Charitable Trust). However, the effect is that the Invercargill City Charitable Trust has inherited a tenant that does not have to pay rent for 16 years. As owner of Rugby Park, the Trust will be paying costs associated with operating it but without rental income from the lease of the administration offices for a 16 year period.

We have not seen any information about why the condition in the resolution about repaying the debt through an arrangement involving corporate boxes as well as a lease was not pursued. We understand from the Director of Finance and Corporate Services that there were legal difficulties with the proposed arrangement involving the corporate boxes and it might not have delivered a favourable outcome for the Council, so it was not pursued. We do note that the final arrangement (settling the debt through a lease arrangement) was in line with the consultation document (option 2), whereas the corporate box licence arrangement only appeared as one of the conditions in the Council resolution. The mixed arrangement would presumably have resulted in a shorter repayment period.

Due to the lack of records or explanation, we cannot make any assessment of whether Councillors appreciated or approved the final arrangement being different to the resolution or that they considered any financial or accounting implications on the Council. We have not seen any financial analysis of the difference between the options for addressing the debt, including on Rugby Southland or the Council. We understand that the effect of the arrangement on Rugby Southland was an important factor.

As the final arrangement for addressing the debt differed from the conditions approved by the Council in its February 2015 resolution, it would have been preferable for the Council to have discussed and approved the

<sup>2</sup> The minutes have a question mark at the end of the sentence. The Director of Finance and Corporate Services has said that the missing word is "debt".

final details of the arrangement, including the method and time period of repayment, the size of the debt, and any financial implications.

Resolutions enable local authorities to take particular actions and to spend money – any departure from a resolution should be transparent. This was not the case here, and is likely to have contributed to the ratepayer's concerns about the matter.

*Financial and accounting implications – has the Council incurred a liability for the pre-paid lease?*

Ownership of Rugby Park transferred to Invercargill City Charitable Trust shortly after 30 June 2016, and was noted in its financial statements as a post-balance date event. As part of the audits of the Invercargill City Council and the Invercargill City Charitable Trust for 2016, our appointed auditor made some comments on accounting and financial implications for the Council and group arising from the acquisition of Rugby Park. Our appointed auditor recommended that the Council engage with the Trust and Invercargill Venues and Events Management, to consider the ongoing impacts of the Stadium transfer on the financial results of the Council group.

Our appointed auditor has also suggested that the current exemption for Invercargill City Charitable Trust from the accountability requirements of the Local Government Act 2002 be reconsidered now that it owns Rugby Park, and that the Trust may need to make changes to its financial reporting and accounting policies.

Our appointed auditor will follow up these matters as part of the audit of the Council and group for the year ended 30 June 2017, including the appropriate accounting treatment for the pre-paid lease. We will also consider any other accounting and financial implications for the Council and Invercargill Venues and Events Management Limited from the arrangement.

#### **Conclusion**

We do note that the Council has achieved its aim of keeping Rugby Park open for the public and the region, and has acquired an asset for the Council group. It has been difficult to assess the concerns raised by the ratepayer in this instance from available Council records, and we regret the time this has taken. We are aware that in a negotiation of this nature there would be matters and points of detail best addressed by the parties working on the arrangement. It appears that the conditions in the resolution about the debt repayment and the lease were premature as they needed to be changed, but this should have been reported more transparently to Councillors. In hindsight, it might have been better to give Councillors a sense of what the conditions might be then report back when the detail had been agreed given the complexity of the arrangement.

We note that the outcome preserved the Council's broad intention as reflected in its consultation with the community, that it would take responsibility for the debt between SOST and Rugby Southland, as part of the arrangement to secure the future of Rugby Park.

We thank the Director of Finance and Corporate Services and staff for assisting us with this matter.

Yours sincerely



Jonathan Keate  
Senior Solicitor/Sector Manager

Copy Ian Lothian, Appointed Auditor



**Appendix**

**References to debt between SOST and Rugby Southland in consultation document, resolution and deed of arrangement**

Consultation document	Resolution	Deed of Arrangement
<p>February 2015</p> <p>The Council would assume responsibility for a debt of approximately \$740,000 owed by SOST to Rugby Southland, to be reduced in exchange for free office rental to Rugby Southland at a rate of \$35,000 per year (part of option 2)</p>	<p>Council meeting - 24 February 2015</p> <p>The Council selling by licence the rights to half of the corporate boxes to Rugby Southland for a term sufficient to extinguish the current debt owed by SOST to Rugby Southland.</p> <p>Rugby Southland entering into a lease arrangement with the Council for use of the Administration offices at the Stadium at a yearly rental of \$35,000 per annum.<sup>3</sup></p>	<p>Undated</p> <p>All debts of SOST to be settled before the Council approved its payment of \$400,000 and the transfer of ownership of the stadium to it.</p> <p>SOST to enter into a lease with Rugby Southland on terms to be agreed and approved by the Council for the use of the administration offices of the Stadium for a term of 16 years, at a rental of \$55,000.</p> <p>The rental payable would be sufficient by prepayment of rental by Rugby Southland by exchange of cheques to repay any debts owed by SOST to Rugby Southland as at 31 March 2015.</p>

<sup>3</sup> The term of the lease was not specified.