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THE DUNEDIN PUBLIC ART GALLERY SOCIETY

A note on its origins and constitutional history

The Dunedin Public Art Gallery, the institution with which the Society has always been intimately concerned, is older than the Society.

The Gallery was founded by a resolution of the Otago Art Society on October 14th 1884.(1) By 1890 it was a collection of pictures on show to the public in the Municipal Chambers building in the Octagon, owned and under the control of the Otago Art Society.(2)

In that year a new committee was formed at a public meeting to acquire pictures from the 1889/90 New Zealand and South Seas Exhibition as the nucleus of a national art gallery. This was first called the Committee of the Public Art Gallery of Dunedin but straight away adopted the title Committee of the Dunedin Public Art Gallery.(3)

The idea of taking this step was W.M. Hodgkins' but Alexander Bathgate and D'Arcy Haggitt were associated with him in calling the meeting and Mr Haggitt became its first Chairman.(4)

The committee raised money, bought pictures, erected a new Gallery beside the Otago Museum and placed its pictures there, where they were joined by those of the Otago Art Society.(5) This had all been accomplished by the 19th of November 1890 when the Committee established in place of itself The Board of Trustees of the Dunedin Public Art Gallery.(6) The first Chairman of the Board was Mr J.M. Ritchie.(7)

As constituted the Board of Trustees had no legal existence but it could perhaps be considered to be the owner, morally speaking, of the subscribers' pictures and the building (a corrugated iron annexe). The Otago Art Society owned the other bloc of the Gallery's pictures and the two bodies took a hand in managing the institution's affairs. Both were instrumental in buying pictures; the trustees were perhaps more involved in the minutiae of administration. The museum staff handled day to day matters.(8)

This state of affairs changed on 6/9/1906 when, by registering itself under an act of Parliament, the Board of Trustees transformed itself into the Council of a new Dunedin Public Art Gallery Society (Registered). The erstwhile subscribers of the Board of Trustees seem to have become the members of the Society. By this means the Board of Trustees found a legal existence but to do so it had to change both its name and its constitution. Although those who sat on the ruling body continued to call it a Board of Trustees and its head a Chairman, from this time on it was in law a Council and its head was a President.(9) The first person to hold this office seems to have been Mr J.M. Ritchie whom of course we have met before as a Chairman of the old Board of Trustees.(10) The present sequence of Annual Reports dates from this time (that of 1907 being the first). The old Board of Trustees had made Annual Reports before then.

The next significant change occurred on the 23rd of May, 1922 when the Dunedin Public Art Gallery Society and the Otago Art Society amalgamated. The two bodies merged into one under the title The Dunedin Public Art Gallery Society (Registered) (with which is incorporated the Otago Art Society).(11) This had the effect of consolidating the ownership of the Gallery, in the hands of the new body. There continued to be Presidents and the sequence of Annual Reports continued unbroken.

In 1924 the Gallery Society gave the Gallery to the City. This was done on the 24th of September by the signing of a deed of trust which transferred the ownership of the collection, the building and the lease of the land the

building was on, to the Corporation of the Mayor, Councillors and Citizens of Dunedin. It was specified that the Gallery was to be kept open free of charge (except for certain special exhibitions) 363 days of the year for a certain minimum of hours. The Society was left in charge of running the Gallery and was guaranteed a grant of no less than £300 a year to assist it in doing this. It was left in possession of its funds but with the understanding that when they were used to buy items for the collection those would then become assets of the Corporation, not the Society. It was also given the power to sell works from the collection at its discretion and the moneys so arising were required to be spent on further items for the collections.(12) To bring this about a special general meeting had been held on the 23rd of July at which the Gallery Council had been empowered to transfer ownership of the Gallery to the City Corporation, and the constitution was altered to allow the Mayor and the Chairman of the City's finance committee to become *ex officio* members of the Gallery Council in the event of the transfer being made. (13)

Clearly this was a profound change for the Gallery. Whereas it had been the property of an incorporated society, admittedly one that any one could join on payment of a subscription, it now became in effect the civic collection, a department of the City with the only reflection of its previously independent existence being the administrative anomaly that it was run by an incorporated society, instead of directly by the City Council.

With the Corporation as the owner the City Councillors now became the Trustees. (Or that at least is how the relationship has sometimes been described.) In this way one can recognise in City Councils since 24/9/1924 a new Board of Trustees whose successive Chairmen have been the succeeding mayors of Dunedin. The Gallery Society with its Councillors, Presidents and Annual Reports has carried on unchanged.

On the 17th of July 1930 the Society underwent a further change when the Otago Art Society and the Dunedin Public Art Gallery Society disaffiliated.(14) Presumably the category of working members, which had been introduced at the time of the amalgamation, then ceased to exist.

There have been further changes subsequently. One such was effected by the agreement between the Society and the City Corporation of the 28th of August 1967, by which the Theomin Gallery, better known as Olveston, was accepted by the City as a gift, to be administered by the Gallery Society through a special committee set up for the purpose.(15) This has not materially altered the functioning of the Gallery Society nor even involved its personnel in much to do with the Theomin Gallery. The latter carries on effectively as an autonomous institution.

A modification of the constitution was proposed on the 27th of May 1971 and adopted the following year. The effect of the changes was generally to liberalise the composition of the Society's Council and the objects with which it was to run the Gallery. Specifically a clause was introduced enabling the Gallery to do things 'to foster interest in the arts in the community'. This was done to enable the Art Gallery to develop into a National Art Centre - which never happened. But the clause has been used as the charter of the outreach programme, the series of events other than exhibitions, which are held at the Art Gallery. At the same time a limitation was introduced on the length of time an individual could hold office as President.(16) The changes had taken more than a year of discussion - and disagreement - to get this far. At the special meeting the new constitution was adopted after only seven minutes debate.

On the 31st of May 1979, the Society adopted a new constitution which modified that of April 1972.(17) This is the constitution currently in force. The differences between it and the preceding one are minor. It reasserts that the Society exists to operate the Gallery within the terms of the 1924 agreement with the City; to acquire works of art for the Gallery's collections within the

terms of that agreement; to do anything that will tend to foster the arts in the community generally; and to honour the agreement with the city of 1967 over the management of the Theomin Gallery. It continues the series of Presidents, Councils and Annual Reports that started in 1906 and is the most recent form of the mantle first put on by the concerned citizens at their public meeting in 1890. They set up a committee which effectively transformed and ultimately took over the old Art Society's Gallery. The Gallery has since been given to the City but the responsibility for running it has stayed with the Society whose members in 1986 are still citizens concerned with the well-being of the Dunedin Public Art Gallery.

The following lists of officers of the various bodies which have had a part in running the Gallery at different times have to be understood in light of this complex history.

Peter Entwisle
1986

References

- (1) Minutes. O.A.S., D.P.A.G. Archives I
See also Entwisle, The Art Gallery, Dunedin p.4, p.8-12; &
Entwisle, William Mathew Hodgkins & his Circle, pp.40 & 41.
- (2) Entwisle, The Art Gallery, Dunedin, pp.154-161!
- (3) O.D.T. 1/5/1890. (Copy in Mins. D.P.A.G. Vol.1 D.P.A.G. Archives I)
- (4) Ibid.
- (5) Entwisle, The Art Gallery, Dunedin, pp.20-23.
- (6) Report in unidentified newspaper, probably the O.D.T. 20/11/1890.
Copy in Mins. D.P.A.G.S. Vol.1 D.P.A.G. Archives I.
- (7) Trustees Report, Dunedin, May, 1893, p.13. Copy in D.P.A.G. Archives;
Also reproduced in Entwisle, The Art Gallery, Dunedin as Appendix 9.
- (8) An account of these years, 1890-1906 is given in Entwisle, The Art Gallery Dunedin, pp.23-36.
- (9) Declaration to incorporate Dunedin Public Art Gallery Trustees, 8/6/1906
Copy in Mins. D.P.A.G.S. Vol.1, p.127; new constitution adopted 30/8/1906,
Mins. D.P.A.G.S. Vol.1 p.135; new title adopted and registration as an
incorporated society completed, certificate issued by Registrar dated
6/9/1906. (Referred to in Mins. D.P.A.G.S. Vol.1 p.138 17/9/1906.)
- (10) It is not clear who the President then was - as it was often not clear
previously who the Chairman of the Board was. He was not simply the person
who took the Chair at any particular meeting, it seems. Sometimes the
person signing the minutes of the previous meeting is given the title
chairman. Sometimes this is omitted. Perhaps the significance of this is
that the title implies that the person held that office, as distinct from
having merely occupied the chair for a meeting. If that is so then the
fact that Ritchie's signature beneath the minutes of 17/9/1906, the
first meeting after the society's incorporation is subtitled 'Chairman'
may indicate that he had now become, ipso facto President.
- (11) Mins. D.P.A.G. Vol.II p.57. Meeting of 23rd May 1922. Pasted into
page 58 is a copy of the amended rules with Bathgate's hand written
note to the effect that these were adopted by the D.P.A.G. Society on the
24th of May 1922. It was this resolution that effected the amalgamation
(as the annual report pasted into p.56 explains) but Bathgate seems to have
got the date wrong by one day. (Presumably the minutes as the official
record of the meeting are to be preferred to Bathgate's date.)
- (12) Deed of Agreement, D.P.A.G.S. and Corporation of the Mayor, Councillors
and citizens of the City of Dunedin 24/9/1924. Copy in D.P.A.G. Archives.
- (13) Mins. D.P.A.G.S. Vol.3 pp.27-8 23/7/1924.
- (14) Mins D.P.A.G.S. Vol.3 p.122-4, Annual Meeting, 17/7/1930.
- (15) Deed of Agreement, The Mayor, Councillors and Citizens of the City
of Dunedin and The Dunedin Public Art Gallery Society Incorporated 28/8/1967.
Copy in D.P.A.G. Archives.
- (16) The mins. of the 49th A.G.M. 27/5/1971 (Mins. D.P.A.G.S. Vol.3 3/7/1969
to 13/12/1971 p.53), record that two amendments to the constitution were

References (cont'd)

- (16) *cont'd* adopted. However a 'Precis of the Minutes...' of the same meeting (mins. D.P.A.G. Vol. 3/2/72 - 5/6/73 p.115) says "...the meeting decided to defer the adoption of a revised constitution until the Annual General Meeting in 1972". The Proposed Amended Constitution is pasted loc.cit. pp.116-120 and dated April 1972. The Minutes of the 50th A.G.M. are at loc.cit. pp.11-113. They contain no explicit reference to the new constitution. This was discussed instead at a special general meeting held 15 minutes earlier. The minutes of that meeting are in Mins. D.P.A.G.S. Vol. 3/2/72 - 5/6/73 p.6. They summarise the reasons for the proposed changes and record the fact of the new constitution's adoption.
- (17) All the relevant documents are in D.P.A.G.S. Min. Book, April 1978-May 1980.
a) The constitution of April 1972 is on pp.203-207;
b) The record of the A.G.M. of 31st May 1979 is on page 145; the new constitution, dated June 1979 is on pp.137-141. The discussion that took place about the change is recorded in the pages between the two constitutions.

Presidents of the Otago Art Society

During the time it was owner (1884-90); part owner (1890-1922); joint owner (1922-24); or joint administrator (1924-30) of the Dunedin Public Art Gallery.

1884-98	Mr William Mathew Hodgkins.
1898-	?
1922	?
1922-23	Sir Geo. Fenwick
1923-24	Mr D.E. Theomin
1924-25	Sir H. Lindo Ferguson
1925-26	" " " "
1926-27	" " " "
1927-28	Mr John Loudon
1929-29	Mr John Loudon
1929-30	Sir Percy Sargood

Chairman
of the

Committee of the Public Art Gallery of Dunedin

also known as

Committee of the Dunedin Public Art Gallery

30/4/1890 - 19/11/1890

Mr D'Arcy Haggitt.

Chairmen
of

"The Board of Trustees of the Dunedin Public Art Gallery"

1890, 20th November	Mr John MacFarlane Ritchie (Trustees Report May 1893, p.13)
1891	?
1892	?
1893	Mr J.M. Ritchie (Trustees Report May 1893, p.2)
1894	Mr J.M. Ritchie (Trustees Report, printed in O.D.T. 21/3/1894)
1895	Mr J.M. Ritchie (Trustees Report, printed in O.D.T. 9/6/1895)
1896	?
1897	Mr J.M. Ritchie (Trustees Report, printed in O.D.T. 19/3/1897)
1898	?
1899	?
1900	?
1901	?
1902	?
1903	?
1904	?
1905. 31 December	Mr J.M. Ritchie (Ann.Report, 31/12/1905, cyclostyled sheet pasted in Misc. D. P. A. C. S. Vol. 1, p. 100)

N.B. The Chairmen of the Board were not always the same as the persons who chaired its meetings. They may, however, have been the persons who on signing the minutes had the word 'Chairman' written beneath their names. The following were 'chairmen' in that sense.

1890	D'Arcy Haggitt
1891	John MacFarlane Ritchie
1892	Chas. R. Chapman
1893	J.M. Ritchie
1894	Henry Belcher
1895	Henry Belcher
1896	N.Y. Wales
1897	J.M. Ritchie
1900	J.M. Ritchie
1904	George Fenwick; George Joachim
1905	A. Bathgate; J.M. Ritchie; George Joachim.
1906	A. Bathgate.

CHAIRMEN
OF THE
TRUSTEES OF THE DUNEDIN PUBLIC ART GALLERY

1924 - 1962

Trustees are the Dunedin City Councillors ex officio

Chairman is the Mayor of Dunedin ex officio.

1924-25 Mr H.L. Tapley
1927-29 Hon. W.B. Taverner
1929-33 Mr R.S. Black
1933-37 Mr E.T. Cox
1938-44 Mr A.H. Allen
1944-47 Mr D.C. Cameron
1947-50 Sir D.C. Cameron
1950-56 Mr L.M. Wright
1956-59 Sir L.M. Wright
1959-62 Mr T.K.S. Sidey

PRESIDENTS OF THE DUNEDIN PUBLIC ART GALLERY SOCIETY (REGISTERED)

1907	Mr J.M. Ritchie	1971-72	Mr T. Esplin
1910	Mr A. Bathgate	1972-73	Mr G.R. Chance
1911	" "	1973-74	" " "
1912	" "	1974-75	Mr F.A. O'Neill
1913	" "	1975-76	" " "
1914	" "	1976-77	Mr E.C.S. Falconer
1915	" "	1977-78	" " "
1916	" "	1978-79	Mr D. Gootjes
1917	" "	1979-80	" " "
1918	" "	1980-81	Dr J. Ng
1919	" "	1981-82	" " "
1920	" "	1982-83	Mrs F. Paterson
1921	" "	1983-84	" " "
1922-23	Sir Geo. Fenwick	1984-85	Mr E.M. Friedlander
1923-24	Mr D.E. Theomin	1985-86	" " "
1924-25	Sir H. Lindo Ferguson		
1925-26	" " " "		
1926-27	" " " "		
1927-28	" " " "		
1928-29	" " " "		
1929-30	Sir Percy Sargood		
1930-31	" " "		
1931-32	" " "		
1931-32	Mr P.L. Halsted		
1932-33	Mr E.I. Halsted		
1933-34	Mr P.L. Halsted		
1934-35	" " "		
1935-36	" " "		
1936-37	Dr F.S. Batchelor		
1937-38	" " "		
1938-39	" " "		
1939-40	Mr A.H. Fisher		
1940-41	" " "		
1941-42	" " "		
1942-43	Mr H. Mandeno		
1943-44	" " "		
1944-45	" " "		
1945-46	Sir H. Lindo Ferguson		
1946-47	" " " "		
1947-48	Mr A.H. Fisher (Acting)		
1948-49	Mr A.H. Allen		
1949-50	" " "		
1950-51	" " "		
1951-52	Mr H. Mandeno		
1952-53	" " "		
1953-54	" " "		
1954-55	Mr A.H. Allen		
1955-56	" " "		
1956-57	" " "		
1957-58	Miss D. Theomin		
1958-59	" " "		
1959-60	" " "		
1960-61	Sir Carl Smith		
1961-62	" " "		
1962-63	Sir Roy Stevenson		
1963-64	Dr F.G. Soper		
1964-65	" " "		
1965-66	" " "		
1966-67	Mr J. Borrie		
1967-68	" " "		
1968-69	Mr R.W.S. Botting		
1970-71	" " "		

CITY OF DUNEDIN

KM/SW

Fin A/3A

Mr, John Borrie,
President,
Dunedin Public Art Gallery Society,
P.O. Box 566,
Dunedin.

10th May, 1967.

Dear Sir,

Theomin Bequest

Further to previous correspondence on the above subject, I am writing to advise that the matter was further discussed by the Finance Committee at its last meeting.

You will be aware that there have been a number of conflicting statements and opinions published in the press over recent weeks and the Committee feels that the Council should have a clear statement of your Society's present position in relation to the bequest. Accordingly I have been directed to ask if you would formally set-out for us the various points made by the deputation which met the Finance Committee on 20th March last, so that these can be considered in effect, as an addenda to your report of the 6th February, with particular reference to the following:-

1. The fact that the "recommendation" set out in the report was not made upon artistic grounds, and that it was intended to convey only the fact that if the City Council decided on other grounds to accept the bequest, then that the Art Gallery would be very happy to administer it.
2. That the Art Gallery Council is divided upon the matter of the bequest.
3. That if the bequest is declined by the city, the Art Gallery would wish to have only a proportion of the contents, including between 6 and 10 of the paintings, bronzes, ivory, pottery and carpets.
4. That if put to a choice between having money spent on the Theomin property and having more money spent on the Art Gallery (e.g. the proposed new wing) the Art Gallery Council would have a clear preference for further expenditure on the Art Gallery.

The Committee feels that the present position is unsatisfactory in that the Council has a report which has been qualified very substantially in subsequent verbal discussions. These important qualifications have not been appropriately recorded and it would be most helpful to the Council in arriving at a decision on the bequest to know the full mind of the Society on the whole matter, incorporating the four points mentioned above and any others which, on mature reconsideration, the Society may wish to add. In making their request for clarification of the position of the Society may I draw your attention to the financial implications, i.e. the possibility that if the bequest is declined the income from the Charitable Trust may be available to the Art Gallery and also the probability that if the city accepts the bequest, which is referred to in your recent annual report as "an additional Art Gallery", this would militate against the proposal to add to the Art Gallery at Logan Park.

Whatever decision is made I am sure that all Councillors wish it to be the right one and you can be assured that any further assistance which your Society can give towards this end will be appreciated.

The Finance Committee proposes to discuss the question further at its next meeting on the 29th of this month, so that I would be glad to hear from you before that date at the latest. However your co-operation is sought in letting me have this by say Thursday, 25th May, so that copies can be circulated to Councillors before the meeting.

Yours faithfully,
(per) J.C. LUCAS Town Clerk

6. BUSINESS ARISING:

- (a) Theomin Bequest Report and Meeting of the Gallery Theomin Bequest Committee of 1st May, 1967 held to reconsider the financing of "Olveston" - the Chairman briefly reviewed the situation in respect to the Theomin Bequest emphasising that it was due to the "Theomin Bequest Committee", originating through the Chamber of Commerce, that over 1,000 representatives of 100 civic bodies had seen the property. This committee had asked for a 'stay of execution' of the will for three months through the Perpetual Trustees and the Dunedin City Corporation, and this had been granted by the Attorney-General.

Answering questions by Mr. Callis and Mr. Ramsay the Chairman said that no preferential treatment could be expected under the terms of the will for the Art Gallery from the residual estate, if the City Council turned the bequest down. Mr. Callis questioned this contention, as he had been privately informed that the Gallery would probably be one of the chief benefactors from the residual estate. Mr. Borrie confirmed he had asked Mr. Henderson of the Perpetual Trustees to re-study the will, that clause 16 of the will had been read to him, and that it did not specifically mention the Art Gallery as benefitting either by capital grant or income from any "Charitable Trust", were the offer to the Dunedin City Corporation declined.

At this stage, on the motion of Dr. Medlicott seconded by Mr. Callis, it was agreed to take further discussion in committee.

The Chairman said that a letter had been received from the "Theomin Bequest Committee" of the Chamber of Commerce asking the Gallery to comment on the Bequest Committee's estimates for running "Olveston". On the advice of the Director a meeting of the "Gallery Theomin Bequest Committee" had been called for 1st May when costs had been reviewed. What he wanted was approval from Council of these revised estimates. He said that he had also drafted a reply to the Chamber of Commerce "Theomin Bequest Committee" which he wished to read.

Mr. Callis objected to the Chairman's alluding to the letter from the "Theomin Bequest Committee" as a private letter as it was addressed to the Secretary of the Dunedin Public Art Gallery. Mr. Callis rising to a point of order also questioned the validity of the "Gallery Theomin Bequest Committee" which, he claimed, had terminated its work when the requested Gallery report went to the City Council. This contention was not supported.

On the motion of Mr. Ramsay, seconded by Dr. Medlicott, it was agreed to hear the Chairman's reply to the Chamber of Commerce "Theomin Bequest Committee", in committee. The Chairman then read this draft reply.

After further discussion it was agreed, on the motion of Mr. Skinner, seconded by Mr. Callis, that copies of the two letters under discussion be circulated to councillors, and that these, and a general appraisal of the implications in respect to the Gallery's Theomin Bequest policy, be examined at a Special Meeting of Council to be held next Tuesday, 16th May, at 5 p.m. Both the Director and Mr. Skinner emphasised the need to clarify this policy.

REPORT ON THE PROPOSED
"THEOMIN GALLERY"

FROM THE DUNEDIN PUBLIC ART GALLERY COUNCIL
TO THE DUNEDIN CITY CORPORATION

6th February, 1967.

Introduction:

The following report from the Dunedin Public Art Gallery Council is drawn up at the request of His Worship the Mayor, Mr. R.J. Calvert; and it considers the offer of the home of the late Miss Dorothy Theomin, "Olveston", together with all its contents to the corporation of the Mayor, Councillors and citizens of Dunedin as "The Theomin Gallery".

The Art Gallery Council appointed a sub-committee consisting of the President, Mr. J. Borrie, one Vice-President, Mr. Norman Speight, the Treasurer, Mr. Keith Skinner, one elected member of Council, Mrs. Gair Macdonald, one nominated member of Council, Mr. Arthur Salmond and the Director, Mr. Charlton Edgar.

All members of the Art Gallery Council inspected the residence on 12th November, and also subsequently.

The sub-committee considered the proposition in detail on 19th December, 1966, and it discussed all legal aspects of the relevant section of the late Miss Theomin's will, namely sections 12, 13, and 14 on 6th February, 1967 with the representative of the Perpetual Trustees Company - Mr. Douglas, and the Theomin family Solicitor - Mr. I. Gallaway.

The committee ascertained that all legal implications in the will had been fully discussed by the Theomin family Solicitor at the time the will was drawn up - namely the late Mr. Garth Gallaway, and the then Solicitor for the City of Dunedin and the Dunedin Public Art Gallery Society - namely the late Mr. Norman Haggitt.

It was clear that the intention of Miss Theomin was to offer to the City Corporation her residence and its contents as a "civic amenity" and as free from embarrassment to the Corporation or Art Gallery as was legally or humanly possible.

All provisions possible have therefore been written into the will to cover every possible contingency, in her earnest hope that the city would accept her very generous offer.

Provision was made that, should the City Corporation decline this offer, the Art Gallery would be free to remove such objects of art or virtu as it desired to the Art Gallery. The house would then revert to the residual estate to form part of an independent charitable Trust.

The sub-committee of the Art Gallery Council noted that this in itself could cause problems as there would not be the space of the Art Gallery to display adequately all that could be taken, nor would it be financially possible to remove or re-erect representative rooms from the Theomin House at the Art Gallery. The cost of this latter proposal would be prohibitive, nor need the Theomin residual estate financially assist such a venture.

The sub-committee noted that the Government valuation of the Theomin property was:-

Improvements	£8,500
Unimproved value	£9,500
	£18,000
	=====
Probate value of contents	£15,303. 4. 0
Value of Bequest	£33,300

In addition there is an estimated £2,000 per annum from securities in the residual estate payable to the City Corporation after all estate duties have been met.

continued

In discussing the will, clause-by clause with the family Solicitor and the Trustees the sub-committee found that many earlier questions and doubts raised by Art Gallery Councillors at its last meeting of 3.2.67 were clarified.

The sub-committee, and indeed the Art Gallery Council, considered this proposed gift broadly, from a "civic viewpoint", and not from the narrow viewpoint of "how would it affect the Art Gallery or its own development?" It feels the two projects are independent, and the acceptance of the Theomin Gallery should not jeopardise the development of the Dunedin Public Art Gallery, especially the urgently needed storage block.

After considering these points and others, THE SUB-COMMITTEE OF THE ART GALLERY COUNCIL RECOMMENDS TO THE MAYOR AND COUNCILLORS OF DUNEDIN AS FOLLOWS:-

- 1. That, bearing in mind the notable and historic nature of the property, it be accepted by the Dunedin City Corporation for the citizens of Dunedin as "The Theomin Gallery".

This house represents a "way of life" for a successful few in the first hundred years of New Zealand as a nation 1840-1940. Mansion House at Kawau Island was probably the first. "Olveston" was the last, and most splendid. The phase passed with the Depression and World War II.

- 2. While the Art Gallery Council feels the chief interest lies in "The House as an entity", with its past associations, it does lend itself to the display of certain "objects of art". The Art Gallery Council is therefore willing to accept the responsibility and administer it for the City Corporation, subject to certain safeguards.

In so doing it realises that the house itself could not be transported to the present Art Gallery site at Logan Park, nor could any part of it be effectively placed on display there. Further, to display its contents adequately could require the erecting of an additional wing. One could never transplant its "atmosphere" to Logan Park.

- 3. The safeguards are:-

The Art Gallery Society has neither funds nor staff that it can second to the Theomin Gallery.

- 4. Under clause 13 of the will the City Corporation will receive the income from the Trustees of the residual estate "by half-yearly instalments on the first day of April and the first day of October of every year for all time".

This income is at present estimated to be £2,000; but can expect in time gradually to increase with the usual increase in equity holdings.

- 5. The sub-committee noted that under clause 14e of the will the City Corporation is "to repair and keep in repair the residence and grounds, and to keep the property insured against loss or damage by fire, and such other loss or damage as the Trustees may from time to time require, and shall pay the wages of any or all caretakers or attendants required in connection with the upkeep, maintenance, and safeguarding of the residence and the household effects, and shall pay all other charges and outgoings for the time being payable in respect of the property or in the repair, upkeep, maintenance and safeguarding thereof".

There would be immediate "capital charges" and also "take-over development expenses" to be detailed later in this report.

The annual basic expenses devolving directly on the city finances per annum would be:-

(a)	Ground maintenance		£800
(b)	Building maintenance		£200
(c)	Insurance	- say	£300
(d)	Central heat, water heat and light (should be reviewed)		£550
(e)	Household cleaning	- say	£500
			<u>£2,350</u>

continued

6. Regarding staff, the sub-committee recommends:-
- (a) The appointing of a curator to occupy initially the present flat.
 - (b) That the Corporation consider inviting Mr. Brunsdon of the Aigantighe Gallery, Timaru, with his extensive experience in administering a gallery such as the proposed Theomin Gallery to take the post at a salary of say, £1,500 per annum. (A nominal rental would be charged him).

(Mr. Brunsdon was interviewed by the Art Gallery Council in September 1966 as an applicant for the post of Assistant-Director for the Dunedin Public Art Gallery. He at present administers such a gallery as the proposed Theomin Gallery, and would be most suitable for this post).
 - (c) That it consider allotting a sum for general administrative costs, casual receptionists to assist, conduct parties round the Gallery, etc.etc. at an estimated cost of between £500 - £1,000.

7. The sub-committee feels at this stage it would be unwise to be specific as to the general functions of the property, and its general use by the public.

8. Regarding viewing, at the present time two main avenues of approach seem to be:-

- (a) To make the house available for a limited period for public viewing in its present state on the "open day principle".
- (b) To defer public viewing till 1968 in order to give opportunity for appointing a staff, re-organising the collections, arranging methods of guiding parties through, etc. etc.

9. The sub-committee recommends that only the ground and first floors be open to the public, that parts of the principal rooms be suitably roped off - as is done in important houses in the northern hemisphere - and that guided parties of no more than twelve be conducted through by any one person. (It could require three guides to conduct a bus load of tourists through).

A suitable route could be:-

- the main hall,
- dining room,
- library,
- kitchen, etc.
- drawing room,
- the main stairs,
- the afternoon-room and adjoining bedroom,
- the main bathroom, dressing room and bedroom
- the billiard room, and
- go down the main stairs to the main door.

10. Immediate work - the sub-committee noted that the City Engineer recommended that immediate capital work was required.

- outside: renewal of snow gratings and roof stairs £400
- inside: painting £100

It also noted that the electric wiring to the second floor required renewing and additional electric points adding - say £300

Total £800
=====

1. Regarding development expenses, the sub-committee recommends that, in order to give relief to the curator, a second flat be developed on the second floor. (It noted that part of the present flat is connected to the original guests' suite. In time this ground floor section could be returned to the general exhibit).

Were this so, and also in order to give relief to the curator, then two flats would require to be developed on the second floor.

continued

The estimated costs for unfurnished flats on the second floor are:-

- (a) One flat £1,500
- (b) Two flats £3,000

(The electrical re-wiring should be planned in conjunction with this possible development).

The sub-committee noted that Mr. Edgar would be prepared to occupy such a flat, and to pay fair rental for it.

In summary:

In accepting this offer the city will receive:-

- i) A gift of £33,500 in property and objects of art.
- ii) The annual income of £2,000 from a residual estate, in perpetuity.
- iii) Annual rental from two flats - say £400 p.a.

It will acquire a notable house and collection, and a tourist attraction.

The city in return will require to pay:-

- i) Immediate capital costs of £800.
- ii) Possible development charges of £3,300.
- iii) Annual costs of up to £2,350 over and above the £2,000 accruing from the Theomin Estate.

Further, the Trustees have indicated that the terms of the will are so wide that methods of charging admission can be implemented to offset administration and other costs.

JOHN BORRIE
President

Dunedin Public Art Gallery Society Inc.

BRANCHES AT NELSON CHRISTCHURCH TIMARU DUNEDIN INVERCARGILL



THE PERPETUAL TRUSTEES

ESTATE AND AGENCY COMPANY OF NEW ZEALAND LTD.

Established 1884

THE COMPANY ACTS AS EXECUTOR
TRUSTEE, ATTORNEY AGENT FOR
EXECUTORS AND TRUSTEES
PROPERTY MANAGER BUSINESS AGENT
MEMBER R.E.I.N.Z.

Please address all communications to the District Manager Dunedin

Reference:

DJH

1 VOGEL STREET, DUNEDIN

Telephone 77-284

P.O. Box 897

17th October, 1966.

The Town Clerk,
Dunedin City Corporation,
P.O. Box 5045,
DUNEDIN.

Dunedin Public Art Gallery Society Inc.,

COPY FOR YOUR INFORMATION.

Dear Sir,

re Estate Late Dorothy Michaelis Theomin

This Company is the executor of the Will of the late Miss Theomin who died at Dunedin on the 11th October. The deceased in her Will has authorised her executor to conditionally offer to the Dunedin City Corporation her house and contents for the purposes defined in her Will. We are, as executor, also instructed to set aside a special maintenance trust to provide income towards the upkeep of the premises and its contents. An extract of the relevant clauses in the Will is enclosed herewith for your use and a copy has been forwarded to the Director of the Dunedin Public Art Gallery Society Incorporated which is jointly involved with the Corporation in this bequest.

You will realise that we have not yet been able to obtain a grant of Probate and this letter is merely a preliminary notice of the offer to come. The valuation of the contents is at present being undertaken and will be completed in a few weeks time. We cannot at this stage give you an estimate of the income to be produced by the maintenance trust but we shall do so shortly.

In the meantime we would advise that all precautionary measures have been taken to safeguard the valuable contents of the house and we are continuing to employ the staff on the premises. Further information will be forwarded to you as soon as details are available and in accordance with the terms of the Will the formal offer will be made as soon as Probate is granted.

Yours faithfully,
THE PERPETUAL TRUSTEES CO. LTD.


for District Manager.

Encl.

P.S. Please treat the above information as confidential until Probate has been granted.

THEOMIN BEQUEST.

Clause 14 provides that the conditions upon which the offer is made are:-

(a) The residence and household effects are to be transferred into the name of the Corporation, costs being paid out of the residuary estate.

(b) The Corporation is to hold the residence under the name of "The Theomin Gallery" as a public Art Gallery Museum or premises for the exhibition of paintings, drawings or other pictures, sculpture or other objects of art or vertu or of any other articles or objects of public or historical interest for the holding of literary and musical gatherings, recitals or exhibitions or for the doing of anything therein or in connection therewith calculated to foster a love of art, literature, music or other cultural interests in the City of Dunedin or in New Zealand generally.

(c) That the residence and the household effects shall so far as possible retain their present form and identity with the addition only of such other objects of art or vertu or of literary, musical, public or historical interest or value as the Society may wish to exhibit in the residence and subject only to such structural alterations as may be necessary for carrying out effectively and conveniently the purposes specified in sub-clause (b) above and the replacement of articles under the provisions of sub-clause (f) of this clause.

The testator states her desire that access to the residence should be easily available to the public generally and that except on the occasion of special gatherings, recitals or exhibitions, admission should be free.

(d) The Corporation shall delegate the sole control, conduct and management of the said residence and the said household effects to the Dunedin Public Art Gallery Society Inc. in all matters other than the repair, upkeep, maintenance and safeguarding of the residence and the household effects.

(e) The Corporation is to repair and keep in repair the residence and grounds and to keep the same insured against loss or damage by fire and such other loss or damage as the Trustees may from time to time require and shall pay the wages of any or all caretakers or attendants required in connection with the upkeep, maintenance and safeguarding of the residence and the household effects, and shall pay all other charges and outgoings for the time being payable in respect of the property or in the repair, upkeep, maintenance and safeguarding thereof.

(f) The Corporation is to repair and keep in good repair and condition all household effects (fair wear and tear excepted) and to keep the same insured as the Trustees may from time to time require and shall replace with other articles of an equivalent nature and value all or any articles included in the household effects

which through fair wear and tear become worn out, dilapidated or otherwise unsuitable for their original purpose.

(g) In the event of the residence or household effects being destroyed or damaged by fire or other risk against which they are insured, all moneys received under any insurance in respect of such destruction or damage shall be applied towards rebuilding or repairing the residence or replacing such articles.

(h) The Corporation shall not without the consent of the Trustees in writing demolish any portion or portions of the residence or make any alterations or improvements of a substantial nature or erect any new buildings or erections in the grounds, or sell, let, mortgage or otherwise part with possession of any portion of the property or articles included in the household effects.

(i) The Art Gallery Society shall have power in its sole discretion to sell such article or articles included in the household effects as it shall consider unsuitable, unnecessary or inconvenient to retain in or about the residence and the net proceeds of sale shall be received and retained by the Society. The Society shall have power in its sole discretion to release the Corporation from its obligation under sub-clause (f) above to replace such article or articles in the household effects as shall through fair wear and tear have become worn out, dilapidated or unsuitable for their original purpose.

(j) The Corporation and the Society shall be entitled to make such joint rules and regulations for the control, conduct and management of the residence and the household effects as they shall deem necessary or expedient, the Corporation having sole power to make rules and regulations affecting its responsibilities for the repair, upkeep, safeguarding and maintenance of the said residence and household effects and the Society having sole power to make rules and regulations affecting all other matters covering the exhibition of materials and the charges upon which the public shall be admitted to special functions. All such rules and regulations shall be approved by the Trustees.

(k) The net income payable to the Corporation shall in general be wholly expended in the current repair and maintenance of the residence and the household effects and shall not be retained or accumulated by the Corporation except to provide for some special or extraordinary expenditure in connection therewith.

(l) The net proceeds of sale of any article or articles included in the household effects and all moneys arising from charges to the public for admission to or the use of the residence and grounds shall be applied by the Society towards the purchase of additional objects or art or vertu or of literary, musical, public or

historical interest or value which the Society may wish to purchase and exhibit in the residence or towards any other object or purpose connected with the use of the residence as the Trustees shall approve.

(m) The Trustees shall have power upon the joint application of the Corporation and the Society to pay to the Corporation any portion of the capital moneys for the purpose only of effecting such structural alterations as may be necessary for carrying out effectively and conveniently the terms of the trust.

(n) The Corporation and the Society shall submit to the Trustees an annual report upon the state and condition of the residence and the household effects, together with a statement of receipts and payments in connection therewith and generally on the working and operation of the trust.

(o) The decision of the Trustees as to what shall be comprised within the terms of the gift of the household effects shall be final and binding.

(p) If the Corporation shall decide to accept the residence and household effects, such acceptance shall be declared in writing and delivered to the Trustees within six calendar months after the death of the donor. The acceptance shall be accompanied by an undertaking from the Society to accept the conditions as far as they may affect the Society.

(q) Upon acceptance the Corporation and the Society shall under seal give any deeds, agreements, undertakings or other assurances required by the Trustees.

(t) The Trustees, after the Corporation and the Society have assumed control shall not be concerned as to or responsible for the performance of the conditions by the Corporation.

Government Valuation of Theomin Property:

Improvements:	£8,500
Unimproved	<u>£9,500</u>
Total Capital value	<u>£18,000</u>

Rates - order of £400 p.a.

Probate value: £15,303. 4.0

Value of bequest: £33, 300.

Estimated maintenance of the garden: including equipment,
fertiliser etc. £ 800. p.a.

Structure - sound. Estimated take-over of property including
repairs to roof and snow gratings and internal renovations:

Roof tiles	£200
Snow gratings	£200
Painting etc.	<u>£100</u>
	<u>£500.</u>

Estimated annual upkeep of building £200 p.a.

Estimated annual upkeep of maintaining building plus garden £1000 p.a.

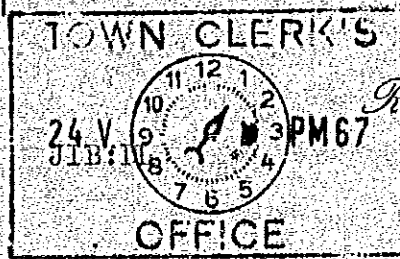
ROBERTSON, BRENT & HAGGITT

BARRISTERS, SOLICITORS
& NOTARIES PUBLIC

JOHN CAMPBELL ROBERTSON

JOHN IRVINE BRENT, NOTARY PUBLIC

MICHAEL HUNTER NORMAN HAGGITT



PHONE 78-581
Cable Address: "PROBATE", Dunedin
P.O. BOX 118

*Royal Exchange Building,
7 Liverpool Street,
Dunedin, C. I. N. Z.
24th May, 1967.*

The Town Clerk,
Municipal Chambers,
DUNEDIN.

Dear Sir,

Theomin Bequest

Following are our replies to the specific questions asked in respect of this bequest.

1. The residence and contents are given to be transferred to the Corporation to be held by it for all time as a public Art Gallery Museum or premises for the exhibition of objects of art or vertu or the doing of anything calculated to foster a love of art literature music or other cultural interest in the City of Dunedin or in New Zealand generally. All moneys received are to be used in connection with the residence and contents and for purposes connected with the main object of the bequest.

We have no doubt that the whole bequest is charitable within the class of gifts for the advancement of education and that this is so notwithstanding that some of the articles may not be generally regarded as being of artistic value.

2. In sub-clause (c) of clause 14 there is an expression of desire and intention that admission should be free to the public generally but this is expressly stated to be without restricting the powers contained in the will to make charges for admission and use.

The modern construction of words of desire or request is stated as follows. "Words of request in their ordinary meaning convey a mere request and do not convey a legal obligation of any kind at law or in equity."

Sub-clause (j) provides for rules to be made as to the charges upon which the public shall be admitted.

Sub-clause (l) provides how moneys arising from charges shall be used.

We think that the Council should take notice of the desire and intention of the testatrix but if it is not practicable to carry them out the Council is under no obligation whatsoever to do so and charges may be made, though it should be noted that the Council and

the Art Gallery Society may make joint rules and regulations or the Society may alone make rules and regulations relating to charges for admission and that sub-clause (l) specifies that if charges are made the moneys received are to be retained by the Society towards the purchase of additional objects of art or in or towards any other object or purpose connected with the use of the residue and household effects as the Trustee shall approve.

2a. It is the Society which arranges the charge for admission or use and retains the proceeds sub-clauses (j) and (l) and we do not think that admission charges, as such may be used to pay the wages of caretakers or attendants which is the responsibility of the Council under sub-clause (e).

There is no express stipulation as to guides but our feeling is that the providing of guides would come under the general heading of conduct and management of the Gallery in respect of which joint regulations or regulations of the Society may be made and that for the services provided by the guides a charge could be made which could go towards paying the salaries of the guides.

We also think that the Trustee could well approve under sub-clause (l) the use of admission moneys towards payment of the salary of guides, as opposed to caretakers and attendants, if it can be shown that the providing of guides facilitates the use of the residence and household effects.

3. There is an expression of desire and intention that the residence and household effects shall as far as possible retain their present form and identity but in our opinion this carries no legal obligation. There is express power under sub-clause (i) for this Society to sell articles considered unsuitable, unnecessary or inconvenient. The proceeds are to be used under sub-clause (e) in the purchase of other articles. In this way the quantity could be reduced and the quality improved.

The house may be used for the holding of literary and musical gatherings recitals and exhibitions or for the doing of anything therein or in connection therewith calculated to foster a love of art, literature, music or other cultural interests.

This would no doubt cover a very wide field of activities but use outside that field would not be permitted. It would be hard to draw the line but we imagine that a social gathering of a cultural group could be held while a public dance or a social gathering not connected with a cultural activity could not.

Any wider use of the property would entail a variation of the trusts which we will deal with later.

4. We do not think it is practicable for the date set by

the will for acceptance of the gift to be extended. The whole bequest of property and moneys is tied to acceptance "within the time limited in that behalf" with express provision for dealing with the assets if acceptance is neglected or refused and we do not think that the Trustee has the power to extend the time although this could no doubt be dealt with by application to the Court.

The Crown is the protector of all charities and although probably no individual could object to an extension the Attorney-General on complaint to him of a breach of trust in respect of this charity would almost certainly be obliged to act.

5. There is no provision in the will for the Council to take the bequest on trial and we do not see that the Trustee could agree to this course.

5a. If the Council accepts the bequest it takes the property on trust and is in effect Trustee to carry out the terms of the will in so far as they relate to it. A Trustee cannot be compelled to remain a trustee but he cannot retire until a new trustee is appointed in his place i.e. either by the Court or by the persons authorised by the will or by statute to appoint a new Trustee. In this case it would be necessary to apply to the Court to appoint a new Trustee to hold the property and carry out the trusts but we imagine that if it reached this stage it would be necessary to make application for variation of the whole trust.

This would not necessarily involve great difficulties if it could be shown that it is impossible or impracticable or inexpedient to carry out the purpose of the trust or if the administration thereof would be facilitated by extending or varying the powers of the Council or the Society. The Attorney-General to whom a Scheme has to be submitted and the Court which has to approve the Scheme are generally very realistic in dealing with such applications but it would of course be necessary to show that a reasonable attempt had been made to carry out the trusts.

6. If the bequest is not accepted the residence contents and the investments fall into and form part of the residuary estate of the testatrix. By clause 15 of the will the testatrix gives her residuary estate to her trustee to sell call in and convert the same into money.

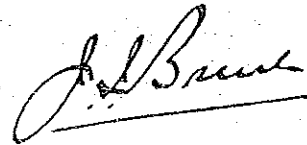
By clause 22 the Trustee is empowered to sell any part of the real and personal estate or any part thereof either by public auction or private contract and either in one lot or in parcels and either for cash or on such terms as to credit

as the Trustee shall deem expedient and in general on terms and conditions as the Trustee shall think fit.

The Trustee could therefore sell by private sale to a trust board or similar body on a long term agreement for sale. It would of course have to exercise its ordinary prudence as a Trustee as to price and security.

Yours faithfully,
ROBERTSON, BRENT & HAGGITT

Per:

A handwritten signature in cursive script, appearing to read "J. Brent", is written over a horizontal line.

KM/8W

Fin A/3A

11th May, 1967

Messrs Robertson, Brent and Haggitt,
P.O. Box 118,
DUNEDIN.

Dear Sirs,

Theomin Bequest

Further to my letter of the 2nd instant in connection with the above matter, I shall be pleased if you will also let me have the answers to the under-mentioned queries:

- (a) As a supplement to Question 2 - Can we charge for guides showing people around and use the charge to pay their salaries?
- (b) As a supplement to Question 5 - If the Council accepts the bequest and later found it was unduly onerous could a subsequent council hand it back to the trustees?

With regard to Question 6 in my previous letter it is desired to make it clear that this refers to real property only.

I shall be pleased if you will kindly include the answers to the above in your reply.

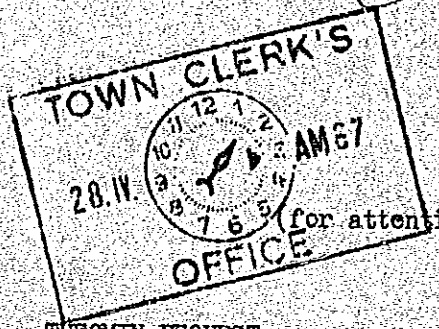
Yours faithfully,

J.C. LUCAS,
TOWN CLERK.

ccp:

The Town Clerk,
Dunedin City Council,
Municipal Buildings,
DUNEDIN.

Dear Sir,



327 York Place,
DUNEDIN.

28th April, 1967.

Jim A/3A
7/2/3

Would you please advise the Council's Finance Committee at its 1st May Meeting that the Theomin Bequest Committee proposes placing a submission before it at its 29th May Meeting. This should be available by 22nd May.

Would you please also advise the Finance Committee that we wish to have it receive a small Deputation at the 29th May Meeting.

Yours faithfully,

M.R.S. ARCHER
Secretary.

KM/SW

Fin A/3A
7/2/1

2nd May, 1967

Messrs Robertson, Brent and Haggitt,
P.O. Box 118,
DUNEDIN.

Dear Sirs,

THEOMIN BEQUEST

As you will be aware the City Council has yet to come to a decision as to whether the Theomin Bequest should be accepted and the matter will come up for discussion at the next meeting of the Finance Committee to be held on the 29th May.

There are a number of points in connection with the Bequest on which your advice is required and the Committee has requested me to submit to you the questions which are set-out hereunder:-

1. Does the carrying-out of the bequest constitute a charitable trust - in particular in relation to gifts or payments made towards the carrying-out of the intention of the testatrix? (It may be relevant to intimate that the Art Gallery has been unable to recommend acceptance of the bequest on artistic grounds).
2. Is it practicable, under the terms of the bequest for any general admission charge to be made? so for what purposes could such revenue be used? If not, is it practicable for the trust to be varied so as to make it possible to charge for admission?

3. Is it practicable, under the terms of the bequest, to reduce the quantity and improve the quality of the contents of the house; to arrange for the house to be used for social and other functions; or to arrange matters in any other way which would make it possible to have a wider use of the property than is apparently envisaged in the will? If not, could the trust be varied to attain these ends or any of them?
4. Is it practicable for the date set by the will for the acceptance of the bequest to be extended? If so, how can this be done? Would any person or authority be able, or bound, to object to any such extension?
5. Is there any legal means by which the city could accept the bequest for a trial period and then either reject it or accept it permanently.
6. If the bequest is declined, would the trustees of the will have power to sell the property by private sale to a trust board or some other body? If so, would the trustees of the will have power to sell to it on a long-term contract.

As mentioned above this matter is to come up for consideration at the Finance Committee meeting on the 29th of this month and it is requested that a reply be received at the earliest possible date, but in any case not later than Thursday, 25th instant, so that copies can be circulated to all Councillors prior to the meeting. Your co-operation in this matter will be appreciated.

Yours faithfully,

J.C. LUCAS,
TOWN CLERK.

per:

From A/B/A
7/3/1

NR

April 24, 1967

MR. COUNCILLOR H.S.J. PALLY

Dear Sir,

Herewith for your information is a copy of a letter which has been received from Mr. Councillor Joel.

The letter will be placed on the order paper for the Finance Committee on Monday next.

Yours Faithfully,

Encl.

TOWN CLERK

ASPINALL, JOEL & HALL

BARRISTERS and
SOLICITORS

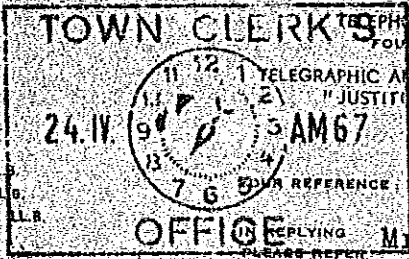
RALPH RYLAND ASPINALL
MAURICE JOEL, LL.B.
HAROLD LEX ASPINALL, LL.B.
REGINALD MABIN HALL, LL.B.
KELVIN CUTHBERT MARKS, LL.B.

P.O. BOX 1384

TELEPHONE 79-371

FOUR LINES

TELEGRAPHIC AND CABLE ADDRESS:
"JUSTITIA" DUNEDIN



HALSBURY CHAMBERS

150 RATTRAY STREET

DUNEDIN

NEW ZEALAND

3
7/1
7/1

21st April, 1967

The Town Clerk,
P.O. Box 5045,
DUNEDIN

Dear Mr Lucas,

re THEOMIN BEQUEST

Would it be reasonable to ask that the City Solicitor be written to asking for answers to the following questions, and perhaps others?

1. Does the carrying-out of the bequest constitute a charitable trust - in particular in relation to gifts or payments made towards the carrying-out of the intention of the testatrix? (It may be relevant to intimate that the Art Gallery has been unable to recommend acceptance of the bequest on artistic grounds).

2. Is it practicable, under the terms of the bequest, for any general admission charge to be made? If so for what purposes could such revenue be used? If not, is it practicable for the trust to be varied so as to make it possible to charge generally for admission?

3. Is it practicable, under the terms of the bequest, to reduce the quantity and improve the quality of the contents of the house; to arrange for the house to be used for social and other functions; or to arrange matters in any other way which would make it possible to have a wider use of the property than is apparently envisaged in the will? If not, could the trust be varied to attain these ends or any of them?

4. Is it practicable for the date set by the will for the acceptance of the bequest to be extended? If so, how can this be done? Would any person or authority be able, or bound, to object to any such extension?

5. Is there any legal means by which the city could accept the bequest for a trial period and then either reject

Solms

it or accept it permanently?

6. If the bequest is declined, would the trustees of the will have power to sell the property by private sale to a trust board or some other body? If so, would the trustees of the will have power to sell to it on a long-term contract?

g Selms

Would it also be appropriate, if the answer to both questions in 6 above are in the affirmative, to enquire of the trustees if they would be prepared to give favourable consideration to the scheme envisaged in those questions and also if they would be prepared to give any indication that, for some years at least, they would be prepared to consider favourably using the income of the trust to support such a scheme?

Next,
Finally, would it be reasonable to ask the Art Gallery Council to set out formally to us the various points their deputation made to us so that these matters can be considered (appropriately I feel) as in effect addenda to the Art Gallery report:-

(a) The fact that the "recommendation" set out in the report was not made upon artistic grounds, and that it was intended to convey only the fact that if the city council decided on other grounds to accept the bequest, then that the Art Gallery would be very happy to administer it.

(b) That the Art Gallery council is divided upon the matter of the bequest

(c) That if the bequest is declined by the city, the Art Gallery would wish to have only a proportion of the contents, including between 6 and 10 of the paintings, bronzes, ivory, pottery and carpets

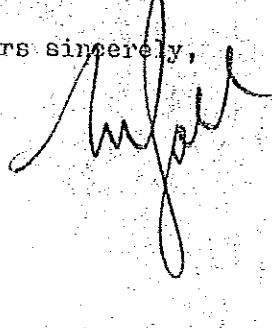
(d) That if put to a choice between having money spent on the Theomin property and having more money spent on the Art Gallery (e.g. the proposed new wing) the Art Gallery council would have a clear preference for further expenditure on the Art Gallery.

At the moment, we are in the position of having received a report from the Art Gallery which their representatives undoubtedly later qualified very substantially in verbal discussions; but these important qualifications have not been recorded by them appropriately, and it seems clear to me that an amendment should be issued incorporating these qualifications

or else the report itself should be withdrawn and reissued incorporating the matters I have set out and any others which on mature reconsideration the Art Gallery Society may wish to add. The present report looks like an uneasy compromise, and it may well be that this is the sort of case where a majority and a minority report could just possibly provide the only solution.

Finally, I feel that the Chamber of Commerce, and perhaps others, should be supplied with a copy of the Mayor's statement, with a covering letter expatiating on several points, including the whole financial situation, and suggesting consideration of other schemes for making the acquisition of the property worthwhile if and after the City Council declines the bequest.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'M. J. G.', is written over the typed text 'Yours sincerely,'.

City Council of Dunedin

Jan A/3A
7A

TOWN CLERK'S DEPARTMENT

Dunedin, March 15, 1957

MINUTE PAPER

THEOMIN BEQUEST

The Town Clerk has been instructed to discuss the question of the Theomin Bequest with the trustees of the late Miss Theomin and thereafter to report to the special meeting of the Finance Committee set down for Monday at, 2.00 inst.

An opportunity has been taken to discuss the matter with the President of the Dunedin Public Art Gallery Society and also with persons concerned in the organisation and conduct of tour parties throughout New Zealand.

The point of view of the Art Gallery Society as put forward by its President is that the Society is ready and willing to undertake the management of the Theomin Gallery for the city if it is the wish of the City Council to accept the bequest, but that at the same time it is the view of the Society that the Theomin Gallery could not in any way be considered to be an extension of the Art Gallery, which would need to be protected and developed as now planned whether or not the Theomin Gallery is accepted. The latter is regarded as a separate and completely distinct activity.

The whole question of the will and the possible alternatives has been discussed with Mr. D.J. Henderson and with Mr. F. Evans, General Manager of the Perpetual Trustees Estate & Agency Co. Ltd.

The main points of the will are set out in my minute of 11th November last and the points which concern the Council to the greatest extent are:

- (a) The liability of the Council for the maintenance of the property;
 - (b) The right of the City to take some part in the policy of the administration of the Gallery, and
 - (c) The right to obtain revenue by way of charges.
- (a) The will places an absolute liability for the maintenance and replacement of all assets, including the building, the grounds and the contents of the building upon the city.

The building and contents must be kept insured and the proceeds of any insurance policy applied to the replacement of any damage.

The Corporation is bound, unless released by the Society, to replace all articles which through fair wear and tear have become worn out, dilapidated or otherwise unsuitable for their original purpose.

It should be noted that there is no provision to indicate what is to happen in the event of a fire, earthquake or other calamity which causes the building and contents to be a total loss. It would seem to be obvious that in such event it would be impossible to reinstate the property and,

should such contingency arise, the question would need to be settled at the time by the exercise of common sense by all concerned, be they trustees, Art Gallery Councillors or City Councillors.

(b) The will provides that the Council shall delegate sole control, conduct and management to the Dunedin Public Art Gallery Society Inc.

Nevertheless, the Council would appear to have some say in the management as it is required to use funds available for the maintenance of the property and its use in accordance with the wishes of the testator.

There could be differences of opinion as to whether the Council could effect real control over the Society in this way or whether by accepting the bequest the Council accepts that it must meet the wishes of the Society in all matters relating to management and make financial provision as required.

(c) In my minute of 21st ult. I reported on the annual cost which would appear to be involved in operating the property in accordance with the suggestions received in the report from the Art Gallery Society. The deficit was there shown as £3,250 per annum.

Clause 14(c) of the will sets out the wishes of the testator, as follows;

"And it is also my desire and intention ... that access to my said residence should be easily available to the public generally and ... should be free to the public generally."

In the trustees' view, which was confirmed in discussion I had with the City Solicitors, the words "my desire and intention" do not make this a binding trust, although they do give a clear indication as to the real intention of the testator.

The trustees say that this might be met by having a number of open days, say six each year, and that for the remainder of the time a charge might be made. There is provision in the will for charges for admission to be made for special functions or exhibitions.

In sub-clause 14(1) it is set out that -

"the nett proceeds of sale of any article or articles included in my said household effects ... and all moneys arising from charges to the public for admission ... shall be received and retained by the Society and the Society shall apply such proceeds and moneys in or towards the purchase of any additional objects of art ... which the Society may wish to purchase and exhibit in my said residence or in or towards any other object or purpose connected with the use of my said residence and my said household effects as my trustee shall approve."

This sub-clause again clearly indicates the desire and intention of the testator, but by including the words "or purpose" it leaves the trustee with a discretion to approve the appropriation of admission moneys towards the maintenance or operation of the Gallery.

From my discussion it appears

of the Perpetual Trustees Co. would recommend the Board to place a very liberal interpretation on the will in order to assist the Council to finance the operation of the Theomin Gallery.

The question which Council must consider is whether or not a sufficient number of people would visit the Gallery to provide a substantial part of the annual outgoings. I have no doubt that for, say, the first year, there would be a very large number of visitors, particularly in the first three months of the first year, but at the same time the volume of visitors would need a very substantial measure of control and supervision, which would be costly, and therefore I do not consider that there would be a sufficient surplus of revenue in that year to meet, say, the £3,800 required for capital expenditure. The position would be likely to follow the pattern of the Moana Pool, where attendance over the estimated figures brought virtually no additional revenue because of the additional supervision which was required.

I have discussed with Mr. J.R. Lunan, of Nichells International Tours Ltd., and Mr. G. Shaw of the Government Tourist Bureau, both of which have had substantial association with the organisation of tour parties, the prospects of having the Gallery included as a regular place to be visited by tour parties which pass through New Zealand. The feeling of these two gentlemen is that the chances would be pretty slim. It appears that the tendency is for shorter tours rather than for longer tours and they think it unlikely that additional time would be allocated to Dunedin to enable tour parties to visit the Theomin Gallery.

The alternatives available to the Council appear to be:

1. To accept the bequest, facing a capital expenditure of £3,800 and an annual cost of £3,000, or
2. To decline the bequest, in which event the Art Gallery would have the right to have "free of all duties such of my pictures, sculpture, china and furniture as they may select for the Society."

The moneys made available as an endowment for the Theomin Gallery would, with two other trusts, become available to the trustees of the Estate of the late D.E. Theomin and the Estate of the late Dorothy Theomin for disbursement at their sole discretion for charitable purposes.

I have reason to believe that the circumstances may be such that the interest of the late Miss Theomin in the Art Gallery would not be overlooked by the trustees.


TOWN CLERK