

**IN THE COURT OF APPEAL
OF NEW ZEALAND**

CA 269/2009

BETWEEN

STOP THE STADIUM INC

Appellant

AND

DUNEDIN CITY COUNCIL

Respondent

**AFFIDAVIT OF PHILIP JAMES HARLAND IN OPPOSITION TO APPEAL
Sworn 7 August 2009**

**ANDERSON LLOYD
LAWYERS
DUNEDIN**

Solicitor: F B Barton
Counsel acting: M B Couling

Level 10, Otago House
Cnr Moray & Princes Street,
Private Bag 1959,
DUNEDIN 9054
Tel 03 477 3973
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I PHILIP JAMES HARLAND, of Dunedin, Chief Executive, swear:

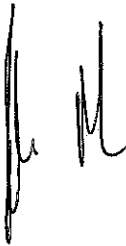
Background

1. My full name is Philip James ("Jim") Harland. I am the Chief Executive of the Dunedin City Council ("the Council").
2. I am providing this Affidavit to update the Court of Appeal on factual developments and decisions the Council has made since the High Court released the decision in favour of the Council on 24 April 2009.
3. Firstly, I will update the Court with the Long Term Council Community Plan consultation process for 2009/10-2018/9 and, secondly, I will explain the costs the Council has incurred with the Forsyth Barr Stadium and University Plaza project since entering into the construction contract and the work that has been undertaken to date.

Steps Taken Following High Court Case, April 2009

4. Having successfully defended the application by Stop the Stadium Inc the Council formally entered into a Guaranteed Maximum Price contract with Hawkins Construction Limited ("Hawkins") on Monday 27 April 2009. The Council entered into this contract for \$130,414,595 on the basis that the High Court had found in its favour and determined that there was no case to answer.
5. The Stop the Stadium Inc was aware of the Council's intention to do this as the Council resolved in a public Council meeting on 20 April 2009 as follows:

"3 *That the GMP offer dated 15 April 2009 from Hawkins Construction Ltd of \$130,414,595 be accepted subject to a favourable outcome, confirmed by the City Solicitor, to the High Court legal proceedings to be advised at latest by 5.00 pm, Monday 27 April 2009*



noting that the total project cost, including professional fees and adjusted sums is \$164,012,135 and that there is an unallocated construction contingency of \$1,387,865 for a total construction cost of \$165,400,000."

6. Despite the High Court decision being released at 10.00am on Friday 24 April Stop the Stadium Inc took no steps to appeal, nor seek a stay pending an appeal. Neither did the Group give any indication that it was considering an appeal or likely to appeal.
7. The Council was not advised of the appeal being lodged until 8 May 12 days after the Council had signed the contract with Hawkins.
8. Due to the tight deadline to meet the World Cup (an expectation of the Government's \$15 million grant to the project) and the conditions in the construction contract it was necessary to immediately commence work. Stop the Stadium Inc would have known this as the Draft Contract programme, which is attached as Annexure "A" and the construction contract (excluding commercially sensitive information) were readily available in the public arena.
9. Since signing this contract the Crown's detailed terms and conditions have been received, which puts even greater pressure on the Council to achieve the completion date of 1 August 2011.
10. Clause 7 in Schedule 1 of the Funding Agreement, which is attached as Annexure "B" makes it clear that should this new stadium not host any games for the Rugby World Cup then the Ministry may, on 20 business days notice to the Council, require the Council to repay all or part of the funding to the Ministry of Economic Development whether or not such funding is committed or uncommitted.

Long Term Council Community Plan 2009/10-2018/19 incorporating the 2009/10 Annual Plan

11. The Council advertised its Draft Long Term Council Community Plan for the period 2009/10-2018/19 incorporating the 2009/10 Annual Plan on 14 March 2009 with a closing date of 5.00 pm Wednesday 15 April 2009 for submissions.
12. A total of 813 submissions were received to this Plan of which 560 dealt with stadium matters. 518 submissions were opposed to the new stadium, 10 were in support, 27 dealt with general comments to do with stadia and 5 sought the upgrade of Carisbrook.
13. The Council's Annual Plan Hearings Committee, which comprised the Mayor and 11 of the 14 Councillors, heard submissions between 4 and 8 May 2009. They held a two day meeting on 11 and 12 May 2009 to deliberate on submissions and make recommendations to the full Council.
14. A report was subsequently provided to the full Council and considered at a Council meeting held on 2 June 2009. A proposed response to all submitters was circulated to Councillors in respect of the stadium, and comments were received from them before this was adopted by the Council as their decision with respect to those who had submitted on stadium matters.
15. Subsequently at the Council meeting on 22 June 2009 the Council formally resolved to strike the rates based on the decisions made through the Long Term Council Community Plan/Annual Plan process referred to above and crucially adopted the LTCCP 2009/10 – 2018/19 ("the LTCCP") for the year commencing 1 July 2009. Attached as Annexure "C" is copies of the relevant pages from the LTCCP, which discuss the stadium.

16. A letter has since been sent to all of those who submitted with respect to the LTCCP in regard to stadia matters setting out the Council's decision with respect to these submissions. The Council's letter is attached as Annexure "D". In this letter it provides the Council's view in respect of matters that submitters raised during the course of this consultation process. It finishes with the following words:

"After considering all submissions, the Council resolved to keep the proposed funding for the stadium in the LTCCP and to proceed with its construction".

17. Councillors were aware that the Council had signed a construction contract with Hawkins on 27 April 2009 as well as the amount of ratepayers funds expended in getting the project to this point. They were also aware of the financial liabilities the Council would incur with Hawkins if the Council did not proceed, which are detailed later in this affidavit.

Proprietary Costs to the Council

18. Mine and the Dunedin City Council's over riding concern with Stop the Stadium's appeal is the fact that if any relief is granted at this late stage it would detrimentally impact upon the Council's contractual obligations to Hawkins and the ongoing viability of the proposed stadium.
19. By entering into the contract the Council has now committed itself to significant financial exposure, which will run into millions of dollars if there is any delay or a need to terminate the contract.
20. Before I discuss the details of the Council's financial exposure and the impact any relief would have on the Council in accordance with the terms and conditions of the construction contract I want to first provide some context.

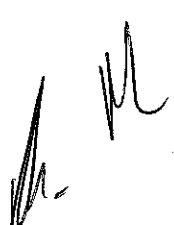
21. To date, that is up until the end of June 2009, the City Council has incurred a cost of \$35.6 million to acquire the site for the proposed Stadium, and has paid \$19.3 million to the Carisbrook Stadium Trust ("CST") for feasibility investigations and the preparation of a developed design against which the guaranteed maximum price contract has been obtained from Hawkins to build the Stadium.
22. In addition the Council has paid the CST \$1.38 million to the end of June 2009 for administration costs and \$3.47 million of construction contract payments.
23. The City Council has also incurred \$1.55 million for changes to the District Plan, which has recently become operative to enable the Stadium to proceed, as well as some additional costs such as rates and insurance.
24. Added together the total cost of the project to the end of June 2009 to the City Council is \$61.3 million. The estimate for the construction, consultancy and other related expenses to the end of July is for an additional \$3.6 million, a total of \$64.9million.
25. Aside from the actual costs there have been indirect costs incurred. For example, the City Council and the Otago Regional Council have been in negotiations and consultation with the public since the Stadium was first proposed in the Dunedin City Council's 2007/2008 Draft Annual Plan as a proposal to amendment to the 2006/07-2015/16 Community Plan 2007. Consultation with the community of Dunedin City as well as the Otago region has been extensive. This is covered in detail in my affidavit filed in the High Court proceedings.
26. Since the execution of the contract, the main contractor has been progressing site establishment. Fencing has been erected around the site, temporary access provisions have been put in, services have been terminated and establishment of temporary power, water and

telecom supplies for the duration of the contract have been progressed.

27. Critically, the demolition and piling contract packages have been let with demolition now underway with a focus on the area where the main south stand is to be located as the structure is on the critical path programme. Buildings have been decommissioned and a number of buildings where the south stand is to be located have now been demolished.
28. The piling works have commenced on site with approximately 220 of the 530 piles sunk on the site for the main stands of the stadium.
29. In addition the following nine trade packages have been approved by the Project Delivery Team of the Carisbrook Stadium Trust which total approximately \$60 million in contract commitments:
 - Demolition - Hall Brothers (Dunedin)
 - Piling - Daniel Smith Industries (Christchurch)
 - Structural steelwork - Graysons Engineering (Auckland)
 - ETFE - Vector Foiltec (UK)
 - Excavation - Fulton Hogan (Dunedin)
 - Cranage - Daniel Smith Industries (Christchurch)
 - Pre-cast bleachers - Concrettec (Auckland)
 - Pre-cast flooring - Fulton Hogan (Dunedin)
 - Reinforcement supply and fix - Fletcher Reinforcing (Dunedin)
30. From an administrative perspective, the public roads on the site have now been stopped and the titles have been amalgamated into one.

31. Under the contract with Hawkins if there are delays to the project the Council will incur additional costs. It is difficult to identify exactly what these would be as it will depend on what stage the construction had reached, the length of any suspension and whether or not the project was terminated.
32. In the event the contract was terminated, the Council is liable to pay a termination fee of \$1,263,195 to Hawkins, a design termination fee of \$980,000 and to pay for work undertaken up until the termination. There could be contractual issues with financial implications relating to the nine approved trade packages referred to in paragraph 29.
33. If the project is not terminated but delayed, Hawkins can claim an extension of time and delay costs arising from that extension. If the delay is not due to a scope amendment Hawkins would still be entitled to delay costs. However, a long delay to the construction timetable would trigger a scope amendment. Hawkins would then be entitled to:
- a. reasonable compensation for time related cost incurred in relation to that extension together with an allowance for profit; and
 - b. an adjustment to the Guaranteed Maximum Price (GMP) contract by the total amount of the verified costs flowing directly from the cause of delay, up to the daily maximum amount of \$17,798.

In respect of item b. Hawkins would need to establish its costs resulting directly from the delay, up to a maximum of \$17,798 per day. This does not mean that Hawkins automatically receives \$17,798 for each day that the suspension continues. However, it is a liability the Council would face if these proceedings result in a delay due to a scope amendment.

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34. As mentioned earlier the Government in providing a \$15 million grant towards the stadium's construction has an expectation that the

stadium will be ready for the World Cup in September 2011. Should a delay occur and the Council still wish to meet the Government's expectation, then this would trigger a premium to accelerate the work beyond normal working hours.

Stop the Stadium Inc's Right to Commence Proceedings

35. Given that the High Court proceedings moved to a substantive hearing within an extremely short timeframe, that is from 2pm on Monday 20 April to a full substantive hearing at 10am on Thursday 23 April in the High Court, it was simply not possible to address certain issues.
36. In particular issues relating to the ability of the Appellant to meet any award of costs and payment of security. Similarly, it was not possible within the timeframes to determine whether or not Stop the Stadium Inc had the right to bring the proceedings in the High Court and now, subsequently, in the Court of Appeal.
37. Annexed and marked "E" is a copy of the Stop the Stadium Inc's Constitution obtained from their website.
38. One of the objects of the Society is "to ensure through effective action that the construction of a publicly funded stadium at Awatea Street is prevented from happening".
39. Clause 7 of the Constitution states that the Society will be managed by a Management Committee consisting of those who have responsibilities for particular components of the Society's activities. Further it says that at any Management Committee meeting five members will constitute a quorum and the committee has the express power to conduct meetings in person or by any other electronic means.

40. My understanding is that given the objects of the Society's Constitution it is entitled to commence proceedings provided of course the decision to do so has been agreed to by the Management committee at a meeting and in accordance with the Constitution.
41. By letter dated 18 May 2009 the Council's solicitors wrote to the Society's solicitors requesting copies of the relevant minutes of the Management Committee meeting where the committee voted in favour of commencing the High Court action and the subsequent appeal to the Court of Appeal.
42. The Council had been working on the assumption that the Group had acted in accordance with its Constitution and accordingly could not see any reason why the Appellant would chose to decline the request. No response was received to that letter.
43. Consequently on 30 July 2009 the Council's solicitors wrote to the Group's solicitors again requesting copies of the relevant minutes of the management committee meetings, which confirmed the committee, had voted in favour of commencing both the High Court proceedings and the subsequent appeal to the Court of Appeal.
44. That request was met with a response from the Group's barrister on 31 July advising "*I will not be providing the information you ask for.*"
45. The refusal of the Group to provide the information must call into question whether or not the Group has acted in accordance with the Constitution and accordingly whether or not the proceedings have been commenced properly. The failure to provide the information, which is neither contentious or privileged, invites only one conclusion; Stop the Stadium Inc failed to comply with its own Constitution in commencing both the High Court and Court of Appeal proceedings.

Summary

46. The Council signed the contract to construct construction with Hawkins after successfully defending the challenge from the Stop the Stadium Incorporated Society in the High Court. It did so in the knowledge that Stop the Stadium had not appealed the decision or sought any stay preventing the Council from entering into the contract. It also did so in the knowledge that the \$15 million grant from the Government towards the capital construction came with the expectation that the stadium would be ready for the Rugby World Cup in September 2011.
47. Work has commenced in accordance with the Draft Contract programme and the Council has incurred costs to 30 June 2009 of \$64.9 million. Approximately \$60 million of contract commitments for nine trade packages have also been made with financial implications if the project is delayed or terminated.
48. The Forsyth Barr Stadium at University Plaza is scheduled to be completed on 1 August 2011 and the Rugby New Zealand World Cup company has expressed a public desire to hold games in the stadium subject to a detailed review of construction progress in July 2010.
49. The Council has completed its 2009/10-2018/19 Community Plan consultation process and resolved to continue rating to provide funding necessary to enable the stadium to be completed in time for the Rugby World Cup. All submitters in respect of the stadium were advised in a detailed seven page letter signed by the Mayor of the Council's reasons for continuing with funding for the stadium.

SWORN at Dunedin

this 7th day of August 2009

before me:

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A Solicitor of the High Court of New Zealand

Nathan Mackay Laws
Solicitor
Dunedin

OTAGO STADIUM DRAFT CONTRACT PROGRAMME

ID	Task Name	Duration	Start	Finish	2009	2010	2011
1	MASTER CONTROL PROGRAMME	605 days	16/02/09	01/03/11			
2	CONSENT REQUIREMENTS	116 days	02/03/09	14/08/09			
3	Latest Dates for Consents	116 days	02/03/09	14/08/09			
4	#1A Demolition, Enabling Works & Infrastructure	79 days	02/03/09	24/06/09			
5	Consent Issue	0 days	02/03/09	02/03/09			
6	Application & Uplift	40 days	29/04/09	24/06/09			
7	#1B Initial Earthworks	40 days	02/03/09	23/04/09			
8	Consent Issue	0 days	02/03/09	02/03/09			
9	Application & Uplift	40 days	02/03/09	29/04/09			
10	#2A All Structure (exc. Roof & exterior)	40 days	01/05/09	26/06/09			
11	Consent Issue	0 days	01/05/09	01/05/09			
12	Application & Uplift	40 days	01/05/09	26/06/09			
13	#2B Bulk Earthworks	40 days	01/05/09	26/06/09			
14	Consent Issue	0 days	01/05/09	01/05/09			
15	Application & Uplift	40 days	01/05/09	26/06/09			
16	#3 Envelope & Fit Out (exc. Tenant/Catering Fit Out)	40 days	22/06/09	14/08/09			
17	Consent Issue	0 days	22/06/09	22/06/09			
18	Application & Uplift	40 days	22/06/09	14/08/09			
19	#4 Demolition of Sewerage Pumping Station	40 days	22/06/09	14/08/09			
20	Consent Issue	0 days	22/06/09	22/06/09			
21	Application & Uplift	40 days	22/06/09	14/08/09			
22	Resource Consent for Storm Water Discharge	40 days	09/03/09	06/05/09			
23	Consent Issue	0 days	09/03/09	09/03/09			
24	Application & Uplift	40 days	09/03/09	06/05/09			
25	DESIGN PROGRAMME	112 days	16/02/09	28/07/09			
26	Services Decommission/Relocation	0 days	20/03/09	20/03/09			
27	Construction Issue for Order	0 days	20/03/09	20/03/09			
28	Understab Services	0 days	20/03/09	20/03/09			
29	Construction Issue for Order	0 days	20/03/09	20/03/09			
30	Services New Connections	0 days	20/03/09	20/03/09			
31	Construction Issue for Order	0 days	20/03/09	20/03/09			
32	Demolition	0 days	20/03/09	20/03/09			
33	Construction Issue for Order	0 days	20/03/09	20/03/09			
34	ETFE	0 days	20/03/09	20/03/09			
35	Construction Issue for Order	0 days	20/03/09	20/03/09			
36	Piling	0 days	20/03/09	20/03/09			
37	Construction Issue for Order	0 days	20/03/09	20/03/09			
38	Precast Foundation Beams	0 days	20/03/09	20/03/09			
39	Construction Issue for Order	0 days	20/03/09	20/03/09			
40	Steel Gable CHS	0 days	27/03/09	27/03/09			
41	Construction Issue for Order	0 days	27/03/09	27/03/09			
42	Steel General	0 days	01/05/09	01/05/09			
43	Construction Issue for Order	0 days	01/05/09	01/05/09			
44	STRUCTURE	86 days	26/03/09	28/07/09			
45	Stahl Stand Construction Issue for Piling	0 days	25/03/09	25/03/09			
46	Construction Drawings Main Structure	0 days	08/06/09	08/06/09			
47	Construction Drawings Secondary Structure	0 days	28/07/09	28/07/09			
48	ARCHITECTURAL-Design Completion Dates	92 days	16/02/09	30/06/09			
49	General Arrangement	0 days	15/06/09	15/06/09			
50	Enabling Demolition & Structure	0 days	16/02/09	16/02/09			
51	Enclosure	0 days	30/04/09	30/04/09			
52	Flour/Internal	0 days	15/06/09	15/06/09			
53	Landscape/External Works	0 days	15/06/09	15/06/09			
54	Civil	0 days	31/03/09	31/03/09			
55	Services	0 days	30/06/09	30/06/09			
56	TURF - Completion Dates	78 days	18/02/09	12/06/09			
57	Construction Drawings	0 days	18/02/09	18/02/09			
58	Schedule of Quantities	0 days	16/03/09	16/03/09			
59	Issue Final Design	0 days	12/06/09	12/06/09			
60	PROCUREMENT PROGRAMME	523 days	04/03/09	19/04/11			
60A	DEMOLITION & ENABLING WORKS	244 days	01/05/09	28/04/10			
605	ACCESS TO SITE	0 days	01/05/09	01/05/09			
606	Survey Existing Services including Culvert	40 days	07/05/09	02/07/09			
607	Enabling Works & Decommission/Relocate Services	40 days	01/05/09	25/06/09			
608	NEW MAIN SERVICES - HWY WATER DRAINAGE	47 days	29/06/09	01/08/09			
609	Initial Demolition-Flatten bld B, C, E	40 days	07/05/09	02/07/09			
610	Clear Remainder of site	200 days	03/07/09	29/04/10			
611	Bulk Earthworks	200 days	05/06/09	30/09/10			
612	PILING COMMENCEMENT	8 days	15/06/09	15/06/09			
613	INITIAL SOUTH PILING	12 days	15/06/09	30/06/09			
614	Piling to South Elevation	12 days	15/06/09	30/06/09			
623	CONTRACT PERIOD	613 days	01/07/09	01/06/11			
624	CONTRACT START DATE	0 days	01/07/09	01/07/09			
625	SOUTH STAND	384 days	01/07/09	29/01/11			
1189	Main Column/Truss Foundations	51 days	30/07/09	08/09/09			
1192	Main Steel Columns	97 days	09/10/09	10/03/10			
1200	Main South Truss	92 days	02/11/09	25/03/10			
1207	COMMENCE 1st ROOF ARCH TEMP. WORKS	0 days	01/03/10	01/03/10			
1208	Main Arches	175 days	26/03/10	01/12/10			
1233	TURF	73 days	22/03/10	17/01/11			
1237	TURF LAID	0 days	17/01/11	17/01/11			
1238	Stadium Lighting & TV/AV	180 days	22/03/10	21/09/11			
1242	NORTH STAND	413 days	28/07/09	05/04/11			
1493	West Truss Frame	169 days	30/11/09	30/07/10			
1501	East Truss Frame	423 days	18/08/09	12/05/11			
1514	Site Works	512 days	01/07/09	01/06/11			
1530	HAWKINS CONTRACT PRACTICAL COMPLETION	1 day	01/06/11	01/06/11			

'B'

FUNDING AGREEMENT



DATED the 25th day of June 2009

BETWEEN HER MAJESTY THE QUEEN in right of New Zealand acting by and through DAVID SMOL, Chief Executive, Ministry of Economic Development ("Ministry")

AND THE CARISBROOK STADIUM CHARITABLE TRUST, incorporated under the Charitable Trusts Act 1957, C/-Polson Higgs - Business Higgs, 139 Moray Place, Dunedin, ("Trust")

JOINTLY AND SEVERALLY WITH

THE DUNEDIN CITY COUNCIL a local authority under the Local Government Act 2002 ("Council")

(together the "Recipient")

BACKGROUND

The Ministry wishes to contribute to the Project by providing funding from the appropriation set out in the Details on the terms set out in this Agreement.

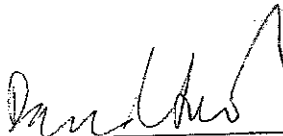
AGREEMENT

The Ministry will pay the Funding to the Recipient, and the Recipient accepts the Funding, on the terms and conditions set out in Schedule 1 (Details), Schedule 2 (Funding Agreement Standard Terms and Conditions) and Schedule 3 (Master Programme).

EXECUTION

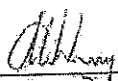
For the Ministry:

Signed for and on behalf of
HER MAJESTY THE QUEEN
in right of New Zealand
by DAVID SMOL, Chief Executive,
Ministry of Economic Development:

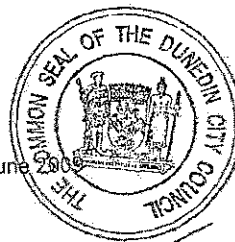

Signature

For the Recipient:

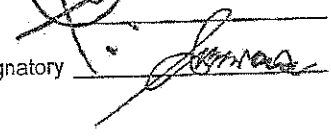
Signed for and on behalf of
THE CARISBROOK STADIUM CHARITABLE
TRUST by:


Signature
Philip James Harland
Print full name
C. Harland
Print title

The Common Seal of the
DUNEDIN CITY COUNCIL
was hereby affixed on June 2009
in the presence of:



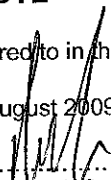

Mayor


Authorised Signatory

885793

EXHIBIT NOTE

This is the annexure marked "B" referred to in the within affidavit
of PHILIP JAMES HARLAND
and sworn at Dunedin this 7th day of August 2009 before me:

Signature: 
A Solicitor of The High Court of New Zealand
(Solicitor to sign part on Exhibit)

DETAILS - SCHEDULE 1

1 Context

The Trust was formed by the Council in 2006 to investigate the options of re-developing the existing Carisbrook Stadium and the feasibility of a new stadium. Following approval from the Council in February 2007, the Trust worked to progress the preferred multi-purpose stadium at Awatea Street ("**Otago Stadium**") in association with the University of Otago. The projected cost of the Otago Stadium is \$188 million.

Following discussions in early 2009 the Acting Minister for the Rugby World Cup wrote to the Chairman of the Trust on 2 March 2009 confirming the Government's intention to provide a maximum of \$15 million towards the construction of Otago Stadium. On 16 April 2009 the Minister for the Rugby World Cup wrote to the Mayor of Dunedin confirming that the Crown would provide a grant of \$15 million towards the construction of Otago Stadium, with an expectation that it will be completed and available to host Rugby World Cup 2011 games, the first of which is scheduled for Dunedin on 14 September 2011.

On 27 April the Trust and the Council signed a contract with Hawkins Construction entitled "Construction Contract for The Otago Stadium" ("**Construction Contract**").

2 Appropriation and approval process (Background)

Cabinet agreed in March 2009 for contributions to stadium projects, including that in Dunedin, to be part of the 2009 Budget and authorised the Prime Minister and Minister of Finance to approve the specific terms of the financial arrangements. The Prime Minister and Minister of Finance have approved the \$15 million Crown grant towards Otago Stadium.

3 Funding (clause 2.1, Schedule 2)

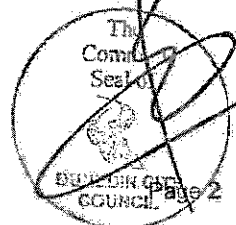
The total amount of the Funding is fifteen million dollars (\$15,000,000) plus GST (if any).

4 Project (clause 2, Schedule 2)

The construction by the Recipient of the Otago Stadium in accordance with the master programme attached as Schedule 4 to the Construction Contract, as amended pursuant to the Construction Contract from time to time (the form of which at the date of this Agreement is set out in Schedule 3 - Master Programme (the "**Master Programme**").

5 Project Tasks (clause 2.3(a), Schedule 2)

Each "Task" specified in rows 1 to 1526 of the Master Programme attached as Schedule 3 (or their equivalents in any amendment of it) including "Construction Start" and "Construction Completion".



6 **Payment terms** (*clause 2.1, Schedule 2*)

The Ministry will pay the full amount of the Funding to the Council on 1 July 2009.

7 **Conditions**

Notwithstanding any other clause of this Agreement, if:

- (a) the Otago Stadium does not host any games for the Rugby World Cup in 2011; or
- (b) the Rugby World Cup Limited, Rugby New Zealand 2011 Limited or any other official organisation which is responsible for hosting the Rugby World Cup in 2011 announces that the Otago Stadium will not be used to host games for the Rugby World Cup, or announces that an alternative sports ground will be used to host games for the Rugby World Cup in the Otago region,

then, the Ministry may, on 20 Business Days' notice to the Recipient, require that the Recipient repay all or part of the Funding to the Ministry, whether or not such Funding is Committed or Uncommitted.

8 **Completion Date** (*clause 2.3(b), Schedule 2*)

1 August 2011, or such other date as the parties may agree.

9 **Reporting Requirements** (*clause 4.1, Schedule 2*)

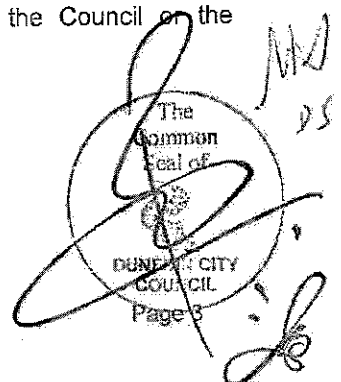
The Trust and the Council must provide reports to the Minister for the Rugby World Cup and the Ministry by the last Business Day of each calendar quarter, beginning on 30 June and within 20 Business Days of completion of the Project.

10 **Content of Report** (*clause 4.1, Schedule 2*)

The report must include:

- (a) the most current version of the Master Programme, and a summary of any material changes to it since the previous version provided;
- (b) progress of the Project against the Master Programme, including achievement of Project Tasks (if any);
- (c) a summary of any expenditure of the Funding in the relevant period;
- (d) any material problems arising or expected to arise with the Project or this Agreement, including any actual or expected delays in completing the Project in accordance with the Master Programme and any material Project risks reported to the Council or the Recipient; and
- (e) any other information requested by the Ministry.

Item (d) is not required in the final report following completion of the Project.



11 **Address for Notices** (*clause 11.5, Schedule 2*)

Ministry: Ministry of Economic Development
33 Bowen Street
PO Box 1473
WELLINGTON

Fax number: 04 474 2659

Attention: Abby Cheeseman (Senior Grants Administrator, IRDB)

Recipient:

Trust: The Carisbrook Stadium Charitable Trust
PO Box 5506
DUNEDIN

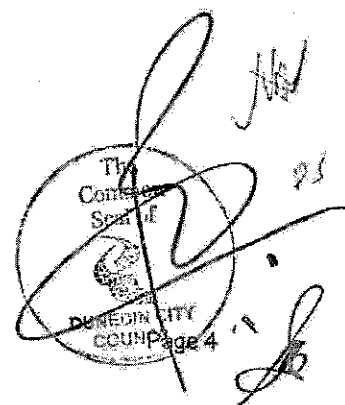
Fax number: 03 471 7436

Attention: Malcolm Farry

Council: Dunedin City Council
PO Box 5045, Moray Place
DUNEDIN 9058

Fax number: 03 474 3594

Attention: Athol Stephens



FUNDING AGREEMENT STANDARD TERMS AND CONDITIONS - SCHEDULE 2

1. Interpretation

- 1.1 In this Agreement, the following terms have the following meanings:

"**Agreement**" means this agreement, including Schedule 1 and this Schedule 2;

"**Business Day**" means any day not being a Saturday or Sunday or public holiday within the meaning of section 44 of the Holidays Act 2003;

"**Commencement Date**" means the commencement date set out in the Details or, if no commencement date is set out, the date of this Agreement;

"**Committed**" means funding that has been spent with a third party or that the Recipient has contractually agreed to spend with a third party for the purpose of carrying out the Project and the Recipient, after using reasonable endeavours, is unable to secure a refund or release from its obligations to the third party in relation to that funding;

"**Completion Date**" has the meaning given in the Details;

"**Confidential Information**" means any information that is disclosed by the Ministry in connection with this Agreement and that the Ministry makes known is confidential or that would reasonably be expected to be confidential;

"**Details**" means Schedule 1;

"**Funding**" means the funding amount set out in the Details;

"**GST**" means goods and services tax within the meaning of the Goods and Services Tax Act 1985;

"**Intellectual Property Rights**" includes copyright and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity;

"**Parties**" means the Ministry and the Recipient;

"**Project**" means the project described in the Details;

"**Project Tasks**" means the project tasks (if any) set out in the Details which must be completed by the Recipient before a Funding payment is made by the Ministry; and

"**Uncommitted Funding**" means any Funding that is not Committed.

- 1.2 References to clauses and Schedules are to clauses and Schedules of this Agreement and references to persons include bodies corporate, unincorporated associations or partnerships.

- 1.3 The headings in this Agreement are for convenience only and have no legal effect.

- 1.4 The singular includes the plural and vice versa.

- 1.5 "Including" and similar words do not imply any limitation.

- 1.6 References to a statute include references to that statute as amended or replaced from time to time.

- 1.7 Monetary references are references to New Zealand currency, except where expressly stated otherwise.

- 1.8 If there is any conflict of meaning between the Details and Schedule 2, Schedule 2 will prevail, except where the Details expressly state otherwise.

2. Funding

- 2.1 The Ministry must pay the Funding at the rate and in the manner set out in the Details. The Funding is the total amount payable by the Ministry for the Project.

- 2.2 The Recipient must use the Funding only to carry out the Project in accordance with this Agreement.

- 2.3 In consideration of the Funding, the Recipient must:

- (a) complete each Project Task (if any) by the relevant payment date set out in the Details;
- (b) complete the Project to the Ministry's satisfaction by the Completion Date;
- (c) carry out the Project in accordance with:
 - (i) the methodology (if any) set out in the Details;
 - (ii) the best currently accepted principles and practice applicable to the field(s) of expertise relating to the Project; and
 - (iii) all applicable laws, regulations, rules and professional codes of conduct or practice; and
- (d) refund any unspent Funding to the Ministry within 10 Business Days of the Completion Date.

- 2.4 Where the total of the Funding under this Agreement and any other money received by the Recipient to carry out the Project exceeds the total cost of the Project, the Recipient must upon request refund to the Ministry the excess amount.

3. Term and Termination

- 3.1 Subject to clauses 3.2 and 3.3, this Agreement will commence on the Commencement Date and expire when:

- (a) the final report is completed and provided to the Ministry; and
- (b) the Project is completed, to the satisfaction of the Ministry.

- 3.2 The Ministry may terminate this Agreement at any time by giving at least 20 Business Days notice to the Recipient. Without limiting this clause 3.2, the Ministry may give notice of termination if the Project has not



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been completed within any timeframe that is specified in this Agreement or in the Recipient's funding application documents or, where no such timeframe was specified, within a reasonable period from the date of this Agreement.

- 3.3 The Ministry may terminate this Agreement immediately by giving notice to the Recipient, if the Recipient
- (a) is in breach of any of its obligations under this Agreement and that breach is not capable of being remedied;
 - (b) fails to remedy any breach of its obligations under this Agreement within 5 Business Days of receipt of notice of the breach from the Ministry;
 - (c) does or omits to do something, or any matter concerning the Recipient comes to the Ministry's attention, which in the Ministry's opinion may cause damage to the business or reputation of the Ministry or of the Government of New Zealand;
 - (d) has given or gives any information to the Ministry which is misleading or inaccurate in any material respect; or
 - (e) becomes insolvent, bankrupt or subject to any form of insolvency action or administration.
- 3.4 Termination of this Agreement is without prejudice to the rights and obligations of the Parties accrued up to and including the date of termination.
- 3.5 On termination of this Agreement:
- (a) the Ministry may require the Recipient to provide evidence of how the Funding has been spent;
 - (b) any Funding that has not yet been paid by the Ministry will not be paid;
 - (c) the Ministry may require the Recipient to refund to the Ministry:
 - (i) any Uncommitted Funding; and/or
 - (ii) where this Agreement is terminated under clause 3.3, the proportion of the Funding that equates to the uncompleted part of the Project, as reasonably determined by the Ministry;
 - (d) if the Funding has been misused or misappropriated by the Recipient, the Ministry may also require the Recipient to refund all Funding paid up to the date of termination, together with interest at the rate of 10% per annum from the date the Recipient was paid the money to the date the Recipient returns the money.
- 3.6 The provisions of this Agreement relating to termination (clause 3), audit and record-keeping (clause 4.2(b), (c) and (d)), warranties (clause 5), intellectual property (clause 6), confidentiality (clause 7), and liability (clause 8) will continue after the expiry or termination of this Agreement.

4. Reporting Requirements and Audit

- 4.1 The Recipient must report on the progress of the Project to the Ministry:
- (a) as set out in the Details;
 - (b) as otherwise reasonably required by the Ministry; and
 - (c) in any format and on any medium reasonably required by the Ministry.
- 4.2 The Recipient must:
- (a) maintain true and accurate records in connection with the use of the Funding and the carrying out of the Project sufficient to enable the Ministry to meet its obligations under the Public Finance Act 1989 and retain such records for at least 7 years after termination or expiry of this Agreement;
 - (b) permit the Ministry, at the Ministry's expense, to inspect or audit (using an auditor nominated by the Ministry), from time to time until 7 years after termination or expiry of this Agreement, all records relevant to this Agreement;
 - (c) allow the Ministry reasonable access to the Recipient's premises or other premises where the Project is being carried out; and
 - (d) appoint a reputable firm of chartered accountants as auditors to audit its financial statements in relation to the use of the Funding;

5. Warranties

- 5.1 Each Party warrants to the other Party that it has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute binding obligations on it in accordance with this Agreement's terms.
- 5.2 The Recipient warrants that:
- (a) it is not insolvent or bankrupt and no action has been taken to initiate any form of insolvency or administration in relation to the Recipient;
 - (b) all information provided by it to the Ministry in connection with this Agreement (including any funding application or similar documents) was, at the time it was provided, true, complete and accurate in all material respects; and
 - (c) it is not aware of any material information that has not been disclosed to the Ministry which may, if disclosed, materially adversely affect the decision of the Ministry whether to provide the Funding.

6. Intellectual Property

- 6.1 All Intellectual Property Rights in the reports provided under clause 4.1 will be owned by the Ministry from the date the reports are created or developed.
- 6.2 All Intellectual Property Rights in any documentation produced by the Recipient or its employees or contractors and provided to the Ministry in relation to the Project is, on creation, jointly owned by the Ministry and the Recipient. Each Party may use (which includes modifying, developing, assigning or licensing)

such intellectual property without obtaining the prior consent of the other Party. On request, the Recipient must provide to the Ministry such documentation in any format, and on any medium, reasonably requested by the Ministry.

6.3 Except as set out in clauses 6.1 and 6.2, the Ministry will not obtain any Intellectual Property Rights in relation to any intellectual property that is developed by the Recipient in the course of the Project.

6.4 The Recipient must ensure that material created or developed in connection with the Project does not infringe the Intellectual Property Rights of any person.

7. Confidentiality

7.1 The Recipient must:

- (a) keep the Confidential Information confidential at all times;
- (b) not disclose any Confidential Information to any person other than its employees or contractors to whom disclosure is necessary for purposes of the Project or this Agreement;
- (c) effect and maintain adequate security measures to safeguard the Confidential Information from access or use by unauthorised persons; and
- (d) ensure that any employees or contractors to whom it discloses the Confidential information are aware of, and comply with, the provisions of this clause 7.

7.2 The obligations of confidentiality in clause 7.1 do not apply to any disclosure of Confidential Information:

- (a) to the extent that such disclosure is necessary for the purposes of completing the Project;
- (b) required by law; or
- (c) where the information has become public other than through a breach of the obligation of confidentiality in this clause 7 by the Recipient, or its employees or contractors, or was disclosed to a Party on a non-confidential basis by a third party.

7.3 The Recipient must obtain the Ministry's prior written agreement over the form and content of any public statement made by the Recipient relating to this Agreement, the Funding, or the Project.

8 Liability

8.1 The Ministry is not liable for any loss of profit, loss of revenue or other indirect, consequential or incidental loss or damage arising under or in connection with this Agreement.

8.2 The maximum liability of the Ministry under or in connection with this Agreement whether arising in contract, tort (including negligence) or otherwise is the total amount which would be payable under this Agreement if the Project had been carried out in accordance with this Agreement.

8.3 The Recipient (including its employees, agents, and contractors, if any) is not an employee, agent or partner of the Ministry or of the Chief Executive of the Ministry. At no time will the Ministry have any liability to meet any of the Recipient's obligations under the

Health and Safety in Employment Act 1992 or to pay to the Recipient:

- (a) holiday pay, sick pay or any other payment under the Holidays Act 2003; or
- (b) redundancy or any other form of severance pay; or
- (c) taxes or levies, including any levies under the Injury Prevention, Rehabilitation and Compensation Act 2001.

8.4 The Recipient indemnifies the Ministry against:

- (a) any taxes, levies, penalties, damages or compensation which the Ministry may be liable to deduct, withhold or pay by reason of the Recipient, or any person used by the Recipient to carry out the Project, being held to be an employee of the Ministry or of the Chief Executive of the Ministry; and
- (b) any claim, liability, loss or expense (including legal fees on a solicitor own client basis) brought or threatened against, or incurred by the Ministry, arising from or in connection with a breach of this Agreement by the Recipient or the Project, or from the negligence or misconduct of the Recipient, its employees or contractors.

8.5 Where the Recipient is a trustee, the Ministry acknowledges that the Recipient has entered into this Agreement as a trustee of the trust named in the Details in an independent capacity without any interest in any of the assets of the trust other than as trustee. Except where the Recipient acts fraudulently, the Recipient is liable under this Agreement only to the extent of the value of the assets of the trust available to meet the Recipient's liability, plus any amount by which the value of those assets has been diminished by any breach of trust caused by the Recipient's wilful default or dishonesty.

9. Dispute Resolution

9.1 Any dispute arising under, or in connection with, this Agreement which cannot be resolved by the Parties within a reasonable period may be submitted by either Party to arbitration under the Arbitration Act 1996 before a sole arbitrator who will decide the dispute. The decision of the arbitrator will be final.

9.2 If the Parties cannot agree on an arbitrator, either Party may request the President of the New Zealand Law Society to appoint a suitably qualified independent arbitrator to hear and determine the dispute.

9.3 The Parties must continue to perform their obligations under this Agreement as far as possible as if no dispute had arisen pending the final settlement of any matter referred to arbitration.

9.4 Nothing in this clause shall preclude either Party from taking immediate steps to seek urgent relief before a New Zealand Court.

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10 Force Majeure

- 10.1 Neither Party will be liable to the other for any failure to perform its obligations under this Agreement by reason of any cause or circumstance beyond the Party's reasonable control including acts of God, communication line failures, power failures, riots, strikes, lock-outs, labour disputes, fires, war, flood, earthquake or other disaster, or governmental action after the date of this Agreement ("Force Majeure Event"). The Party affected must:
- (a) notify the other Party as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event including an estimate of the time likely to be required to overcome it;
 - (b) use its best endeavours to overcome the Force Majeure Event; and
 - (c) continue to perform its obligations as far as practicable.
- 10.2 If by reason of a Force Majeure Event a Party has been unable to perform any material obligation under this Agreement for a period of one month, the other Party may give the first Party one month's notice terminating this Agreement.

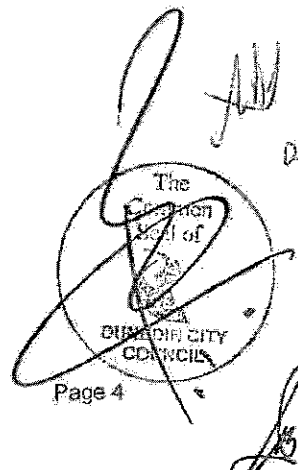
11 General

- 11.1 A waiver by either Party of any rights arising from any breach of any term of this Agreement will not be a continuing waiver of any other rights arising from any other breaches of the same or other terms or conditions of this Agreement. No failure or delay on the part of either Party in the exercise of any right or remedy in this Agreement will operate as a waiver. No single or partial exercise of any such right or remedy will preclude any other or further exercise of that or any other right or remedy.
- 11.2 Assignment:
- (a) The rights and obligations of the Recipient under this Agreement are personal to the Recipient and may only be assigned, delegated or subcontracted with the prior approval in writing of the Ministry (which may be given, declined, or given subject to conditions, in the Ministry's sole discretion). The Recipient remains liable for performance of its obligations under this Agreement despite any approved assignment, subcontracting or delegation.
 - (b) If the Recipient is a company, any transfer of shares, or other arrangement affecting the Recipient or its holding company which results in a change in the effective control of the Recipient is deemed to be an assignment subject to clause 11.2(a).
- 11.3 This Agreement may only be varied by agreement in writing signed by the Parties.
- 11.4 If any part or provision of this Agreement is invalid, unenforceable or in conflict with the law, the invalid or unenforceable part or provision will be replaced with a provision which, as far as possible, accomplishes the original purpose of the part or provision. The

remainder of the Agreement will be binding on the Parties.

- 11.5 Any notice to be given under this Agreement must be in writing and hand delivered or sent by facsimile or post to the Parties' respective addresses or facsimile numbers as set out in the Details. A notice is deemed to be received:
- (a) if personally delivered when delivered;
 - (b) if posted, three Business Days after posting; or
 - (c) if sent by facsimile, at the time of transmission specified in a transmission report by the machine from which the facsimile was sent which indicates the facsimile was sent in its entirety to the facsimile number of the recipient,
- provided that any notice received after 5pm or on a day which is not a Business Day shall be deemed not to have been received until the next Business Day.
- 11.6 This Agreement sets out the entire agreement and understanding of the Parties and supersedes all prior oral or written agreements, understandings or arrangements relating to its subject matter. This clause does not limit clause 5.2(b).
- 11.7 This Agreement may be signed in any number of counterparts (including facsimile copies) and provided that each Party has signed a counterpart, the counterparts, when taken together, will constitute a binding and enforceable agreement between the Parties.
- 11.8 This Agreement will be governed by and construed in accordance with the laws of New Zealand.

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The Education Board of
Auckland City Council

Major City Issues and Projects

This section summarises the key issues arising in this Community Plan and outlines the major projects proposed for the period of the plan.

The key issue for the community in any Community Plan is the way that the activities and projects described in the plan will be funded and the overall impact of the plan on the rating burden placed on residents. This in turn reflects on the Council's ability to contribute to Community outcomes and services provided.

The large new projects put forward in the 2008/09 Annual Plan continue to drive up debt, especially over the next four years. The cash requirements to service this debt will more than double by 2011/12. Prudential ratios are met towards the end of the plan period, chiefly by means of big increases in rates, which may in turn raise questions of affordability.

As was noted last year, for the greater proportion of this plan period the Council exceeds or is near the limits of its debt-carrying capacity. While this places the Council slightly in breach of its prudential limits, the use of the tools of its Liability Management Policy and the absence of major new capital after the stadium and the Secondary Treatment Plant indicates an improving financial position. The latter part of the decade sees a gradual improvement in ratios but there remains little room for new borrowing on new projects.

Economic Development

Economic Development is consistently identified as a key issue for the city at Well-being Forums and in Focus Groups. The current economic recession makes this area especially prominent in the minds of the Community

The Council is very active in this area with the Economic Development Unit (EDU) providing support and advice to a number of industry sectors. Often the work of EDU is not highly visible as it is the business initiatives using the service that quite rightly get the benefits and public exposure. Support is provided in a variety of ways – from business advice, working with government agencies to secure advice assistance with development of funding applications for Research Grants, to funding for new initiatives via the Economic Development Unit's Industry Project Fund. Councilors voted to increase this fund by \$461,000 from 2009/10 – 2011/12 to provide additional opportunities for economic and business development in the challenging economic environment we face.

The Economic Development Unit is driving development of an independent urban fibre broadband network via Council-owned companies Delta and Aurora. This initiative will expand business communication opportunities across the city.

Stadium

The Council's role to date has been to continue to partially fund investigation into the construction of a 30,000 seat covered stadium. On 9 February 2009 further resolutions, as detailed below, were passed for inclusion in the Draft Community Plan.

Following the receipt of a guaranteed minimum price tender and two annual/community plan consultations, the Council has decided to proceed with the project under the terms of its earlier resolutions.

On 9 February 2009 the Council confirmed its commitment to the Awatea Street multi-purpose stadium. The resolutions taken at this meeting are shown below in their entirety and contain the conditions attached to this decision. Before the stadium proceeds, the project must meet various conditions, including ensuring planning issues are resolved and that extra money is found to meet a shortfall in private sector funding. This needs to be in the form of a grant, a limited recourse loan or a combination of these funding methods. These conditions are described in Resolutions 6 and 7.

The Carisbrook Stadium Trust has also been instructed to find either savings in the construction budget or additional funding.

In supporting construction of a new stadium, the Council aims to strengthen the city and region's future position as centre for national and international sports competition and events. The stadium would be used for a wide variety of activities, such as rugby matches, conferences and concerts.

The resolutions made on 9 February 2009 replace resolutions made by the Council at meetings in June 2007, March 2008 and September 2008, which had previously laid out conditions and recommendations for further development of the stadium proposal, funding and reducing cost to ratepayers.

EXHIBIT NOTE

This is the annexure marked "C" referred to in the within affidavit of **PHILIP JAMES HARLAND** and sworn at Dunedin this 7th day of August 2009 before me:

Signature:.....
A Solicitor of The High Court of New Zealand
(Solicitor to sign part on Exhibit)

Resolutions passed at a meeting of the Dunedin City Council held on Monday, 9 February 2009:

- " 1 That Council notes that in the public excluded part of this meeting:
 - a) the reports and attachments provided therein were received; and
 - b) the information contained in the reports and attachments remain confidential.
- 2 That the report of the Chief Executive together with the various attachments thereto is received.
- 3 That the report from the Stakeholders Group dated 2 February 2009 and the attachments be received.
- 4 That the report from the Council's General Manager Finance and Corporate Support on the Modelled Financial Implications for the Council is received.
- 5 The Council notes:
 - a) that the bridging loan requirement for DCC on 1 July 2011 has increased from \$19.2 million to \$42.6 million to offset the present shortfall in capital funding from the private sector due to timing changes, and that this loan balance is expected to fall to \$24.1 million by 30 June 2012.
 - b) the shortfall in capital funding of \$3 million from the Otago Community Trust.
 - c) the current lack of success in reducing the Council contribution by \$20 million but that the cost to the ratepayer as consulted in the 2008/09 Annual Plan has not increased because of the reduction in interest rates. The funding model shows that the average value residential property (\$291,000) would pay \$66 per annum, the average non-residential property (\$968,000) will pay \$664 per annum and the average farmland property (\$710,000) will pay \$145 per annum which are the same figures as are in the 2008/09 Annual Plan.
 - d) the ratepayers' contribution will cover the \$5 million shortfall in DCHL dividends for the duration of the 20 year loan period to pay off the stadium loan.
- 6 In relation to the Council resolutions of 17 March 2008 as amended on 29 September 2008, the Council notes as follows:
 - 1) the total net cost of the project is now \$198 million and that the increase is primarily due to increased land costs and lack of offsets from the sale of Carisbrook. This includes a budget of \$165.4 million for construction costs that is achievable based on the guaranteed maximum price (GMP) and contingency information received to date.

- 2) resolutions 2 (a) and (b) relating to property purchases have been previously confirmed.
- 3) that a public tender process to obtain a GMP in accordance with the Council's procurement process has been achieved.
- 4) a contract has been entered into with the University of Otago in relation to the land it is to purchase and written confirmation has been given by the University of Otago as to the facilities that are proposed to be built on the land.
- 5) a decision on the Plan Change was delivered by Commissioners on 10 January 2009 and the appeal period ends on 23 February 2009.
- 6) a service level deed has been completed.
- 7) a) confirmation of Otago Regional Council funding of not less than \$37.5 million is awaited.
 - b) agreements negotiated by the Dunedin City Council with the Otago Rugby Football Union for the sale and purchase of the Union's property assets have been completed.
 - c) the Council has sighted and approved the occupation and revenue agreements between the CST and the Otago Rugby Football Union noting some revision may be required.
 - d) that 51.1% of the private funding target of \$45.5 million has been confirmed and it is noted that, pending agreements, if they are confirmed, then the minimum of 60% of the private sector funding target of \$45.5 million would be achieved and it is noted that the CST have advised that there is an additional \$15 million required for the servicing of bridging finance.
 - e) notes that the Rates and Funding Working Party have been unable to date to identify and confirm a source for the \$20 million reduction in ratepayer capital cost.
- 8) An application was made to the Otago Community Trust for funding of \$10 million and advice has been received that a grant of \$7 million has been made available.
- 7 That the Dunedin City Council commits to the Awatea Street stadium project on the following terms and conditions:
 - a) the confirmation of Otago Regional Council funding of not less than \$37.5 million.
 - b) a satisfactory conclusion to the planning process and approval of a Plan Change by the Courts.
 - c) i) the Rates and Funding Working Party to continue to identify ways in which the ratepayers contributions to the capital cost of the stadium can be

reduced by \$20 million providing it comes from sources that do not have a direct cost to ratepayers.

- ii) discussion and agreement with the ORC occurs on the sharing of any external funding which reduces ratepayer costs.*
- d) that Council retains the funding line in the draft LTCCP for the project.*
- e) that a funding source to meet the \$15 million shortfall in private sector funding be confirmed.*
- f) that the DCC instructs the CST to continue to investigate ways by either:*
 - i) savings on the GMP budget.*
 - ii) additional funding over and above the target of \$45.5 million.*
 - iii) to address the \$3 million shortfall of funding from the target of \$10 million, from the Otago Community Trust.*
- g) that where any of the above resolutions conflict or are inconsistent with any prior resolutions of the Council the above resolutions shall prevail."*

With regard to resolution 6(4) it should be noted that the Council has a draft contract with the University of Otago to purchase land.

Cost and Funding of the Stadium

The total cost of the project is now \$198.3 million. The increase is primarily due to increased land costs and lack of offsets from the sale of Carlsbrook. The total project cost includes a budget of \$165.4 million for construction costs. This will be achievable based on the guaranteed maximum price (GMP and contingency information received to date). >

The funding for the project is confirmed as follows:

Otago Regional Council	\$37.5 million
Community Trust of Otago	\$7.0 million
University of Otago	\$10.0 million
Government	\$15.0 million
Dunedin City Council	\$98.5 million
Private Sector Funding	\$30.3 million
Total	\$198.3 million

An additional \$6.4 million from Dunedin City Council will be set aside as a capital maintenance fund.

The Council's rates and funding working party will continue to look at ways in which the ratepayer contribution can be cut by \$20 million.

Who will own the Stadium?

Dunedin City Council will own the stadium directly up to its completion. It will then be transferred into the ownership of a 100% council owned company. The Council has now decided, following the public consultation on the Draft Plan and further professional advice, to form two companies. The first company, Dunedin Venues Management Limited (DVML), will be responsible for the management of the stadium and other venues such as the Dunedin Centre and the Edgar Centre. DVML will be established as per the statement of intent published in the Draft Plan and will be formed from 1 July 2009. The second company, provisionally named Dunedin City Venues Limited (DCVL), will be responsible for the ownership of the stadium, but will not acquire the property until its completion in August 2011. The statement of intent for DCVL will be consulted upon in the 2010/11 Annual Plan consultation.

The Council believes that the management of the stadium by a Council Controlled Trading Organisation (CCTO) in a business-like manner will better ensure its commercial success, at the same time ensuring that the benefits of public ownership are retained. This will remove the debt servicing costs from being a direct charge on ratepayers, but it will have the effect of reducing the dividends from the companies. This shortfall in the Council's income is made up by the additional general rates.

The ratepayers' contribution will cover the \$5 million shortfall in dividends from Council-owned companies over the 20 years it will take to pay off the stadium loan.

What will it cost ratepayers?

Due to falling interest rates the cost to ratepayers, as indicated in the 2008/09 Annual Plan, has not increased. It is \$56 a year for the median value residential property and \$66 a year for the average value residential property, \$662 a year for the average commercial property and \$144 a year for the average value farmland.

Table 1: Rates on Individual Properties

	Value type	Value	Annual Rating for Stadium
Residential	Mode	225,000	\$51
	Median	250,000	\$56
	Average	291,000	\$66
	Other example	400,000	\$90
Non-residential	Other example	500,000	\$113
	Median	325,000	\$222
	Average	968,000	\$662
	Median	470,000	\$96
Farmland	Average	710,000	\$144

Private Sector Funding

Around 3% of the private sector funding is forecast to be received prior to the transfer into the CCTO. The remaining 97% will be received by the Council between the 2011/12 and 2021/22 years. This means that an amount of debt, around \$29.1 million, will remain on the Council's books after the stadium is transferred into the CCTO. Under the current forecast for private sector funding, there is sufficient revenue to pay the interest expense and the loan repayments during this time.

Private sector funding consists of sponsorships, corporate seating, and corporate entertainment suites. The majority of this funding is received in equal annual instalments from the time the stadium becomes operational.

Risks

The following updates the assessment of financial risks since the Draft Community Plan was issued in March 2009:

- Interest rates.* Interest rate hedges are in place for \$90 million.
- Construction costs.* A Guaranteed Maximum Price (GMP) was received on 28 January 2009. This, plus fees and contingencies, amounts to \$165.4million, as budgeted.
- Funding risks.* A Council resolution in September 2008 calling for private sector funding

to meet a 60% target was achieved by the Carlsbrook Stadium Trust. Given today's economic conditions this may be seen as a substantial reduction in risk although the change to an instalment basis for payment rather than a lump sum, up front basis has created a need for bridging funding. Central Government has agreed to provide \$15 million on 1 July 2009, which will materially improve cashflow during construction.

- Operating risks.* These are the risks that, once completed and operating, the venue will not produce enough cash flow to sustain itself. The Council believes this risk will be reduced by forming a Venues Management company that will market, promote, co-ordinate and integrate this venue along with other Dunedin venues and that there will be valuable cost savings from that.

- Trading group results.* The council-owned companies operate in competitive markets and conditions in those markets can vary.

- Planning risks.* To date all plan changes have been approved without appeal. This has improved the timeline for construction..

Social Housing

The Council is developing a Social Housing Strategy in partnership with other agencies. Consultation on the Draft Social Housing Strategy is underway and closes on 15 August 2009. The strategy defines community aspirations for social housing provision in Dunedin, and options for the Council's role in providing social housing.

The capital expenditure budget for the construction of additional new social housing units has been removed from this plan. The cash that would have been used to fund this capital expenditure is has not been allocated to any other projects or activities and accumulates on the Council's Balance Sheet.

Please note that in the 2009/10 year there is a capital expenditure budget of \$1.3 million for new housing units. This expenditure was originally forecast to be spent in the 2008/09 year but will not now be incurred until the 2009/10 year.

The capital expenditure budget for the renewal of existing housing units remains in this plan.

Stadium

The Council's role to date has been to continue to partially fund investigation into the construction of a 30,000 seat covered stadium. On 9 February 2009 further resolutions, as detailed below, were passed for inclusion in the Draft Community Plan.

Following the receipt of a guaranteed minimum price tender and two annual/community plan consultations, the Council has decided to proceed with the project under the terms of its earlier resolutions.

On 9 February 2009 the Council confirmed its commitment to the Awatea Street multi-purpose stadium. The resolutions taken at this meeting are shown below in their entirety and contain the conditions attached to this decision. Before the stadium proceeds, the project must meet various conditions, including ensuring planning issues are resolved and that extra money is found to meet a shortfall in private sector funding. This needs to be in the form of a grant, a limited recourse loan or a combination of these funding methods. These conditions are described in Resolutions 6 and 7.

The Carisbrook Stadium Trust has also been instructed to find either savings in the construction budget or additional funding.

In supporting construction of a new stadium, the Council aims to strengthen the city and region's future position as centre for national and international sports competition and events. The stadium would be used for a wide variety of activities, such as rugby matches, conferences and concerts.

The resolutions made on 9 February 2009 replace resolutions made by the Council at meetings in June 2007, March 2008 and September 2008, which had previously laid out conditions and recommendations for further development of the stadium proposal, funding and reducing cost to ratepayers.

Resolutions passed at a meeting of the Dunedin City Council held on Monday, 9 February 2009:

" 1 That Council notes that in the public excluded part of this meeting:

- a) the reports and attachments provided therein were received; and
- b) the information contained in the reports and attachments remain confidential.

2 That the report of the Chief Executive together with the various attachments thereto is received.

3 That the report from the Stakeholders Group dated 2 February 2009 and the attachments be received.

4 That the report from the Council's General Manager Finance and Corporate Support on the Modelled Financial Implications for the Council is received.

5 The Council notes:

- a) that the bridging loan requirement for DCC on 1 July 2011 has increased from \$19.2 million to \$42.6 million to offset the present shortfall in capital funding from the private sector due to timing changes, and that this loan balance is expected to fall to \$24.1 million by 30 June 2012.
 - b) the shortfall in capital funding of \$3 million from the Otago Community Trust.
 - c) the current lack of success in reducing the Council contribution by \$20 million but that the cost to the ratepayer as consulted in the 2008/09 Annual Plan has not increased because of the reduction in interest rates. The funding model shows that the average value residential property (\$291,000) would pay \$66 per annum, the average non-residential property (\$968,000) will pay \$664 per annum and the average farmland property (\$710,000) will pay \$145 per annum which are the same figures as are in the 2008/09 Annual Plan.
 - d) the ratepayers' contribution will cover the \$5 million shortfall in DCHL dividends for the duration of the 20 year loan period to pay off the stadium loan.
- 6 In relation to the Council resolutions of 17 March 2008 as amended on 29 September 2008, the Council notes as follows:
- 1) the total net cost of the project is now \$198 million and that the increase is primarily due to increased land costs and lack of offsets from the sale of Carisbrook. This includes a budget of \$165.4 million for construction costs that is achievable based on the guaranteed maximum price (GMP) and contingency information received to date.
 - 2) resolutions 2 (a) and (b) relating to property purchases have been previously confirmed.
 - 3) that a public tender process to obtain a GMP in accordance with the Council's procurement process has been achieved.
 - 4) a contract has been entered into with the University of Otago in relation to the land it is to purchase and written confirmation has been given by the University of Otago as to the facilities that are proposed to be built on the land.
 - 5) a decision on the Plan Change was delivered by Commissioners on 10 January 2009 and the appeal period ends on 23 February 2009.

- 6) a service level deal has been completed.
- 7) a) confirmation of Otago Regional Council funding of not less than \$37.5 million is awaited.
- b) agreements negotiated by the Dunedin City Council with the Otago Rugby Football Union for the sale and purchase of the Union's property assets have been completed.
- c) the Council has sighted and approved the occupation and revenue agreements between the CST and the Otago Rugby Football Union noting some revision may be required.
- d) that 51.1% of the private funding target of \$45.5 million has been confirmed and it is noted that, pending agreements, if they are confirmed, then the minimum of 60% of the private sector funding target of \$45.5 million would be achieved and it is noted that the CST have advised that there is an additional \$15 million required for the servicing of bridging finance.
- e) notes that the Rates and Funding Working Party have been unable to date to identify and confirm a source for the \$20 million reduction in ratepayer capital cost.
- 8) An application was made to the Otago Community Trust for funding of \$10 million and advice has been received that a grant of \$7 million has been made available.
- 7 That the Dunedin City Council commits to the Awatea Street stadium project on the following terms and conditions:
 - a) the confirmation of Otago Regional Council funding of not less than \$37.5 million.
 - b) a satisfactory conclusion to the planning process and approval of a Plan Change by the Courts.
 - c) i) the Rates and Funding Working Party to continue to identify ways in which the ratepayers contributions to the capital cost of the stadium can be reduced by \$20 million providing it comes from sources that do not have a direct cost to ratepayers.
 - ii) discussion and agreement with the ORC occurs on the sharing of any external funding which reduces ratepayer costs.
 - d) that Council retains the funding line in the draft LTCCP for the project.
 - e) that a funding source to meet the \$15 million shortfall in private sector funding be confirmed.
 - f) that the DCC instructs the CST to continue to investigate ways by either:
 - i) savings on the GMP budget.

- ii) additional funding over and above the target of \$45.5 million.
- iii) to address the \$3 million shortfall of funding from the target of \$10 million, from the Otago Community Trust.
- g) that where any of the above resolutions conflict or are inconsistent with any prior resolutions of the Council the above resolutions shall prevail."

With regard to resolution 6(4) it should be noted that the Council has a draft contract with the University of Otago to purchase land.

Cost and Funding of the Stadium

The total cost of the project is now \$198.3 million. The increase is primarily due to increased land costs and lack of offsets from the sale of Carisbrook. The total project cost includes a budget of \$165.4 million for construction costs. This will be achievable based on the guaranteed maximum price (GMP) and contingency information received to date).

The funding for the project is confirmed as follows:

Otago Regional Council	\$37.5 million
Community Trust of Otago	\$7.0 million
University of Otago	\$10.0 million
Government	\$15.0 million
Dunedin City Council	\$98.5 million
Private Sector Funding	\$30.3 million
Total	\$198.3 million

An additional \$6.4 million from Dunedin City Council will be set aside as a capital maintenance fund.

The Council's rates and funding working party will continue to look at ways in which the ratepayer contribution can be cut by \$20 million.

Who will own the Stadium?

Dunedin City Council will own the stadium directly up to its completion. It will then be transferred into the ownership of a 100% council owned company. The Council has now decided, following the public consultation on the Draft Plan and further professional advice, to form two companies. The first company, Dunedin Venues Management Limited (DVML), will be responsible for the management of the stadium and other venues such as the Dunedin Centre

Private Sector Funding

Around 3% of the private sector funding is forecast to be received prior to the transfer into the CCTO. The remaining 97% will be received by the Council between the 2011/12 and 2021/22 years. This means that an amount of debt, around \$29.1 million, will remain on the Council's books after the stadium is transferred into the CCTO. Under the current forecast for private sector funding, there is sufficient revenue to pay the interest expense and the loan repayments during this time.

Private sector funding consists of sponsorships, corporate seating, and corporate entertainment suites. The majority of this funding is received in equal annual instalments from the time the stadium becomes operational.

Risks

The following updates the assessment of financial risks since the Draft Community Plan was issued in March 2009:

- Interest rates.* Interest rate hedges are in place for \$90 million.
- Construction costs.* A Guaranteed Maximum Price (GMP) was received on 28 January 2009. This, plus fees and contingencies, amounts to \$165.4 million, as budgeted.
- Funding risks.* A Council resolution in September 2008 calling for private sector funding to meet a 60% target was achieved by the Carlsbrook Stadium Trust. Given today's economic conditions this may be seen as a substantial reduction in risk although the change to an instalment basis for payment rather than a lump sum, up front basis has created a need for bridging funding. Central Government has agreed to provide \$15 million on 1 July 2009, which will materially improve cashflow during construction.
- Operating risks.* These are the risks that, once completed and operating, the venue will not produce enough cash flow to sustain itself. The Council believes this risk will be reduced by forming a Venues Management company that will market, promote, co-ordinate and integrate this venue along with other Dunedin venues and that there will be valuable cost savings from that.
- Trading group results.* The council-owned companies operate in competitive markets and conditions in those markets can vary.
- Planning risks.* To date all plan changes have been approved without appeal. This has improved the timeline for construction..

and the Edgar Centre. DVML will be established as per the statement of intent published in the Draft Plan and will be formed from 1 July 2009. The second company, provisionally named Dunedin City Venues Limited (DCVL), will be responsible for the ownership of the stadium, but will not acquire the property until its completion in August 2011. The statement of intent for DCVL will be consulted upon in the 2010/11 Annual Plan consultation.

The Council believes that the management of the stadium by a Council Controlled Trading Organisation (CCTO) in a business-like manner will better ensure its commercial success, at the same time ensuring that the benefits of public ownership are retained. This will remove the debt servicing costs from being a direct charge on ratepayers, but it will have the effect of reducing the dividends from the companies. This shortfall in the Council's income is made up by the additional general rates.

The ratepayers' contribution will cover the \$5 million shortfall in dividends from Council-owned companies over the 20 years it will take to pay off the stadium loan.

What will it cost ratepayers?

Due to falling interest rates the cost to ratepayers, as indicated in the 2008/09 Annual Plan, has not increased. It is at \$56 a year for the median value residential property and \$66 a year for the average value residential property, \$662 a year for the average commercial property and \$144 a year for the average value farmland.

Table 1.10: Rates on Individual Properties

	Value type	Value	Annual Rating for Stadium
Residential	Mode	225,000	\$51
	Median	250,000	\$56
	Average	291,000	\$66
	Other example	400,000	\$90
Non-residential	Other example	500,000	\$113
	Median	325,000	\$222
	Average	968,000	\$662
	Median	470,000	\$96
Farmland	Average	710,000	\$144

D



**DUNEDIN CITY
COUNCIL**

Kaunihera-a-rohe o Otago

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26 June 2009

EXHIBIT NOTE

This is the annexure marked "D" referred to in the within affidavit
of **PHILIP JAMES HARLAND**
and sworn at Dunedin this 7th day of August 2009 before me:

Ratepayers
Dunedin City

Signature:.....
A Solicitor of the High Court of New Zealand
(Solicitor to sign part on Exhibit)

Dear Ratepayer

Thank you for your submission to the Dunedin City Council's (DCC) draft Long Term Council Community Plan.

This comprehensive response is intended for all those who, like yourself, submitted on the Stadium, whether for or against, whether you spoke to your submission or whether you preferred not to.

It attempts to succinctly respond to the many aspects of the Stadium that were canvassed by submissions and, we trust in sufficient detail to address the matters raised by you, or other submitters.

For ease of reference, the various issues raised in the submissions are addressed under the relevant headings.

Current Status

You will now be aware that an application for a judicial review of the decision to proceed with the Stadium was dismissed by Justice Chisholm in the High Court in Christchurch on 24 April 2009. An appeal against that decision to the Court of Appeal was lodged on 8 May 2009.

Separately, another application for a judicial review of the Otago Regional Council's decision to support the Stadium has been heard and dismissed in the High Court in Dunedin this month.

Following the Christchurch High Court decision on the application for a judicial review in Dunedin City Council's favour on 24 April 2009, and in accordance with its earlier resolutions, a guaranteed maximum price contract (GMP) with the main contractor, Hawkins Construction Limited, was signed on 27 April 2009 for \$130.4 million.

Carisbrook should be upgraded

No-one doubts the historic resonance of Carisbrook, also affectionately known as "The Brook" and the "House of Pain".

In 2003 the Dunedin City Council established a working party comprising the Chief Executives of the Dunedin City Council, the Otago Regional Council, the Community Trust of Otago, the Otago Rugby Football Union and community representation. This Working Party was asked to identify how Carisbrook could be upgraded and also to explore other options to achieve a category A rugby test status. This Working Party, with the support of Beca Consultants, identified three possible options which it reported to the Council in December 2004. These were:

- do nothing - which was maintaining the ground as well as possible;
- a progressive upgrade - costs were identified as between \$20 and \$50 million; and

- a replacement with a new, high-class, waterfront stadium at an estimated cost of greater than \$100 million and a likely cost of \$146 million based on updated costs for the Westpac Stadium in Wellington.

This work was subsequently passed to the Carisbrook Stadium Trust which then presented four options to the Council on upgrading Carisbrook in February 2007. These options ranged in cost from \$29.3 million to \$184.1 million. Given the location of Carisbrook there would have been no interest from the University of Otago in supporting the project and it would have essentially remained a rugby stadium. The Dunedin City Council also noted that the long-term economic benefit to the city was also lower than for a new multi-purpose stadium at a new location on Awatea Street.

Carisbrook should be used for public good purposes when freehold ownership passes to the Council

At this time the Council has not discussed this matter, nor has any detailed research on options been carried out. Prior to any decision on the future of Carisbrook the Council will consult with the community and sporting organisations.

There have been no studies of the options

As discussed earlier the Council, the Otago Rugby Football Union, the Community Trust of Otago and the Otago Regional Council have all, from time to time, helped fund options studies. MWH delivered an in-depth report on the engineering needs, financial requirements and usability of a Carisbrook site redevelopment. Beca Carter undertook some designs and costings for an upgraded Carisbrook. The Carisbrook Stadium Trust also undertook further work on options and presented the Council with six that are set out below:

Construction Costs (2007 dollars)

New		Carisbrook Upgrade Options			
1a	1b	2a	2b	2c	2d
New Stadium with roof	New Stadium without roof	Minor upgrade to meet NZRU requirements	Replacement of Burns Street main stand	New Stadium design with roof	New Stadium design without roof
\$186 million	\$150 million	\$29.3 million	\$69 million	\$184.1 million	\$131 million

(Source: Carisbrook Opportunity, Dunedin Master Plan and Feasibility Report, February 2007, Carisbrook Stadium Trust)

Prior to the inclusion of this proposal a significant amount of consultation was undertaken by the DCC's Working Party and subsequently the Carisbrook Stadium Trust with the Dunedin residents as well as the wider Otago region on options for upgrading Carisbrook, doing nothing or building a new multi-purpose stadium near the Awatea Street site based on the example and experience of Westpac Stadium in Wellington. This included a telephone survey, a leaflet put into every letterbox of the region and the holding of public meetings throughout the Otago region.

There are too many risks

The DCC believes it has reduced the risks by securing a guaranteed maximum price construction contract, setting in place a venue hire agreement for the major event owner, fixing interest rates for 70% of the opening debt and by proposing the establishment of a commercially driven venues management company to promote events and integrate the Stadium with other Council owned venues.

Ratepayer contributions will become greater as the years go by

In 2008/09 the average value residential property is paying \$40 for the Stadium. In 2009/10 this will become \$66, an increase of \$26 per annum (pa). No increase beyond \$66 pa is forecast - based on the current differential between residential, farmland and commercial property. The forecast rate increases for Dunedin over the next three years are caused by debt servicing on the Settlers' Museum, the Dunedin Centre, sewage treatment, water extensions, new roading projects and increased operating costs on all these and other activities.

It should be noted that beyond 2009/10, forecast rates increases are not attributable to the Stadium.

Stadiums are not profitable

This is not correct as the audited financial statements for the Westpac Stadium in Wellington for the last seven years show:

Year	Surplus \$
2001/02	1,146,000
2002/03	1,919,000
2003/04	374,000
2004/05	2,536,000
2005/06	2,279,000
2006/07	2,051,000
2007/08	2,984,000

(Source - Chartered Accountants Journal, Feb 2009)

It is noted that Wellington City Council (\$15 million) and Wellington Regional Council (\$25 million) advanced unsecured loans on which no interest has been charged. However, the conditions which have to be met before the Wellington Regional Stadium Trust is obliged to repay the loans gives the loans many of the characteristics of equity contributions, a fact recognised by their write-down to \$395,000 in the 2007/08 financial report.

The return on total assets in 2007/08 is 2.86% and on Trust Funds (the equivalent of equity on a private sector balance sheet) is 4.8%. While a profitable, well managed, private sector business might expect higher returns, the Wellington Regional Stadium Trust makes it clear that it manages a community asset (24% of its 2007/08 events were community events) in a business-like manner.

There is rarely, if ever, an expectation to achieve an economic return on community assets such as pools, art galleries and libraries.

A change in the farmland differential means they pay more

Year one of the ten year proposal to change the general rate differential has the proportion paid by farmland unchanged, at 5.8%. The Council has asked its Rates Working Party to review this.

Farmland ratepayers have been paying for general rate funded activities such as Rooding, Parks and Reserves, Libraries, the Otago Museum, the Otago Settlers' Museum, the Dunedin Public Art Gallery, the Botanic Garden and others on the current basis ever since capital value rating started. The method of rating for the Stadium is no different.

It is worth noting that farmland ratepayers with high capital values earn a proportionately higher credit from Council's investment income. The rates calculator on the DCC website illustrates this point. Go to www.dunedin.govt.nz, click on Rates information, click on Rates calculator, enter your property's capital value, whether it is residential, non-residential or farmland for rating purposes, and press 'enter'. Scroll all the way down to see the amount you contribute to each activity and at the bottom see what the credit is from Council's investment income.

Capital value rating for the Stadium is unfair

Capital value based rating has one decisive advantage. It condenses many variables such as distance from schools, shops, health services and public transport, housing quality, connection to water and wastewater, proximity to roads, soil type, income potential, climate etc into a single number. For this reason, two identical homes, one in Dunedin and the other in Middlesmarch, will have different values and, as a consequence, different rates. The way these variables act on property values is effectively a "natural" differential.

It can be argued, therefore, that a further differential is not required because all the variables that affect values are already built in. Moreover, an artificial distinction, such as a ward boundary, might attribute to one property a variable, eg distance from schools, that is not relevant but deprive another where it is. Hence, a distinction created by lines on a map deprives the rating system of the subtleties and flexibility of a capital value based system.

The effect on ratepayers is not clear

In Volume One (page 19) of the Council's Draft 2009/10-2018/19 Community Plan, under the headings "Stadium effect" and "Cash flows from CCTOs [Council Controlled Trading Organisation]" how the funding of the new Stadium will affect ratepayers is described. For the average value property owner, the current \$40 pa will rise to \$66 pa (incl GST) in 2009/10 and remain at that level for 22 years when the last of the Stadium debt in the CCTO is paid off. The 22 years comprises two years of construction plus 20 years for the loan duration.

Of the total population of residential properties in Dunedin, 64% have rating valuations that are lower than average.

It is worth restating how the ownership and operation of the Stadium will work. Following the successful model adopted by Christchurch, the Stadium, will be managed by a council owned company, provisionally known as Dunedin Venues Management Limited. It will be charged with operating the Stadium in a professional, business-like manner, co-ordinated and integrated with other Dunedin venues, to better ensure its commercial success. A second company, Dunedin City Venues Limited, also owned by the Council, will own the physical assets and carry the debt previously borne by the Council. The cash required to service the debt comes from the collective cash flows and financial efficiencies from within the group of council-owned companies as well as the release of the companies from an obligation to remit \$5 million pa to its Council shareholder. In other words Council ratepayers contribute \$5 million pa for the 20 years of the Stadium loan. The need to make up the dividend shortfall gives rise to the need to raise rates to the extent that the owner of the average value residential property will pay \$66 pa for the duration of the loan.

There is no major tenant

The Otago Rugby Football Union has signed a Venue Hire Agreement for 35 years as the major tenant with a right of extension.

The World Cup is already set for Carisbrook

The World Cup organisers have reserved the right to shift the matches to the new Stadium if it is completed. The Crown's \$15 million contribution comes with an expectation that the Stadium will be available for the Rugby World Cup.

Operating revenue pays for capital costs

Cash flows are the most important thing - like all business, some cash goes to meet operating costs, some is invested and some repays debt. The Stadium will have to optimise those cash flows.

Accordingly, again like any other business, part of the "seating products" revenue (from the sale of corporate lounges, memberships, open club reserves, founders club) will be used to service the bridging finance that was needed when the market indicated it wanted to pay by instalments in arrears rather than lump sums up front. For now, the modelling assumes 75% of the lounge memberships and open club reserves will have been sold by opening day and that 70% of the annual income will be used to repay the estimated bridging loan of \$30 million needed to fund the construction of the Stadium by the end of the 2010/11 year.

Only those who use the Stadium should pay for its construction

This view opens up the notion that people who do not use city facilities need not pay for them. If this argument was accepted the same approach would have to be taken for facilities such as the libraries, museums, art gallery, Dunedin Centre and so on. It is unlikely the city would have any of these facilities at a quality expected by residents. We suggest that attempting to apply this would be chaotic in practice. For the most part, the residents of a city accept that, even though there are services and facilities they do not use, they are still prepared to pay for them.

There are no economic benefits

A BERL study of the Westpac Stadium in Wellington concluded there were positive economic outcomes and favourable social outcomes.

The economic benefit of the options presented by the Carisbrook Stadium Trust in February 2007 are set out in the table below:

Impacts \$ 2007	Options					
	1a	1b	2a	2b	2c	2d
	New Stadium with roof	New Stadium without roof	Minor upgrade to meet NZRU requirements	Replacement of Burns Street main stand	New Stadium design with roof	New Stadium design without roof
Positive Economic Impact (\$million)	365.5	266	78.1	134.7	241.7	184.2
Average annual positive economic impact (\$million)	24	17	4	7	15	11
Opportunity cost (\$million)	142.1	106.0	23.3	57.0	154.4	109.4
Net Economic Impact (\$million)	223.4	160.0	54.8	77.7	87.3	74.4
Economic Impact Ratio	2.6	2.5	3.4	2.4	1.6	1.7

(Source: Carisbrook Opportunity, Dunedin Master Plan and Feasibility Report, February 2007, Carisbrook Stadium Trust)

The new Stadium with a roof (Option 1a) is the option chosen by the Council now known as the Forsyth Barr Stadium at University Plaza. The analysis shows that over a 50 year period and discounted back to 2010 dollars there is a positive economic impact estimated at \$365.5 million with an average annual positive economic impact of \$24 million for the Stadium. The value of using this money for other purposes, which is known as an opportunity cost, was estimated at \$142.1 million which results in a total net economic impact in 2010 dollars of \$223.4 million over the 50 year life of the Stadium. It is calculated the economic benefit will be driven by increased visitors to Dunedin City and the Otago region, the holding of events which will include international rugby, professional rugby in the form of the Highlanders, other promotional opportunities including an annual concert and the impact of obtaining additional students to the University of Otago. The Stadium will provide an opportunity to showcase the lifestyle available in the city and regional generally.

There will also be a positive and strengthened association with the University of Otago, which will create opportunities for improved teaching and research facilities. The Council understands from discussions with the University of Otago that it will assist in their ability to recruit and retain both lecturers and students. The majority of students do not reside in the Otago region or the city of Dunedin.

Council keeps missing deadlines

In a project of this size and complexity it is impossible to be able to see every step along the way. Those unforeseen obstacles and delays have meant that some milestones have not been met. However, the bigger objectives have been met and the programme of construction, now that it has cleared the planning, design, funding and approval hurdles, is on track to be completed in time to host the Rugby World Cup in October 2011. This was the intention when the Carisbrook Stadium Trust presented its Master Plan and Feasibility to the Council in February 2007.

Ratepayers should not fund the bridging loan

The private sector funding bridging loan is serviced and repaid entirely by a portion of private sector funding of seating products. It is not intended ratepayer funding goes towards repayment of that debt. Refer to paragraph under Operating Revenue pays for Capital Costs on page 4 for further detail.

Central Government's contribution has bailed out the private sector

The Central Government contribution of \$15 million has been made because they want the project to succeed in time for the World Cup. It covers the:

- 1 timing changes when private funding will be received
- 2 expected number of sales of seating products prior to opening
- 3 increased costs in the project due to the unavailability of a surplus on disposal of Carisbrook, an increase in site acquisition costs and a shortfall in the anticipated contribution from the Community Trust of Otago.

Whether the Crown's grant is viewed as support for private sector, public sector or CTO funding does not matter in the long run. The Crown's \$15 million is a cash grant, expected on or about 1 July 2009. It is not an underwrite in the usual meaning of that word.

Targeted rates should be levied on those that benefit most

The Council recognises that there are likely to be activities (land uses) that receive greater benefit than the average ratepayer. On the day of a big event, it is not hard to work out who they are. The Council's Rates and Funding Working Party has considered options that might reflect the extra benefit obtained by those land uses eg accommodation, hospitality, retail. To date, it has not been able to identify a genuinely equitable method of allocating this extra benefit.

Capital value rating does not reflect incomes

We have compared median property values to median household incomes, (the average values were not available), for all Dunedin City Council census meshblocks (copy attached). Clearly there is a strong correlation between median household incomes and median property values. Secondly, councils have no authority in legislation to raise revenues on the basis of household incomes. The Council also does not have access to Inland Revenue Department records which are the only reliable source of income.

It needs to be noted that high value residential property, which provides no income potential, is faced with a similar situation. Equally, a business may not be producing net income but if it owns its premises it, too, is faced with rates along with, in their case, a differential of 3.03 in 2009/10.

The Council's view is that it has no wish, even if the law permitted it, to know ratepayer incomes.

Funding options

In 2007/08 the Council first consulted on funding options. Under the option proposed at that time, Dunedin City Holdings Ltd (DCHL) contributed additional dividends of \$60 million (\$3 million pa for 20 years) for the purpose of repaying the principal on the loan taken out by the Council. The remaining interest and principal loan repayments were to be funded by ratepayers from a mixture of:

- 1 general rate (on capital value)
- 2 targeted rate 20 year loan of \$2.5 million capital value for non-residential activities.

This was clearly set out in the summary sent to all ratepayers with the 2007/08 Draft Annual Plan incorporating amendments to the 2006/07-2015/16 Community Plan:

	Principal	Interest
Loan 1 \$60 million	DCHL	Ratepayers
Loan 2 \$31.4 million	Ratepayers	Ratepayers
Total \$91.4 million		

At the time of that 2007/08 consultation the cost to a \$175,000 capital value property was identified as between \$75 and \$88.50.

By structuring the ownership and operation of the Stadium as described on page 5 under the heading "The effect on ratepayers is not clear" not only are operating efficiencies and synergies expected but also financial efficiencies.

Consultation

The planning documents in which the Stadium has appeared for consultation are as follows:

- 2007/08 draft Annual Plan
- 2008/09 draft Annual Plan
- Full page publication of details of the proposal in the Otago Daily Times 29 March 2008.

Additional detailed information on the proposal to build a stadium was published in the April 2007 edition of "City Talk" which was delivered to all Dunedin households.

The DCC and the Otago Regional Council undertook consultation including a telephone survey, leaflets being dropped in each Otago residence and public meetings held throughout the province.

Explanatory material has been on the DCC's website since April 2008.

Articles varying from comprehensive, detailed analyses to much briefer stories have been published. Interviews on radio and television, local and national, have been widely broadcast over the last two years.

In short, aside from widespread formal consultation there has been a considerable amount of detailed information available to the public from many sources.

Conclusion

For those who have submitted we thank you. While you may still have reservations about the Stadium project, you may be assured that Councillors and the Carisbrook Stadium Trust have always sought the best advice and had it peer-reviewed before making final decisions. In this way the Council believes it has reduced the risks of the project to the point where we can be as confident as we can on undertakings of this size that it will be completed on budget and will operate successfully.

After considering all submissions, the Council resolved to keep the proposed funding for the Stadium in the LTCCP and to proceed with its construction.

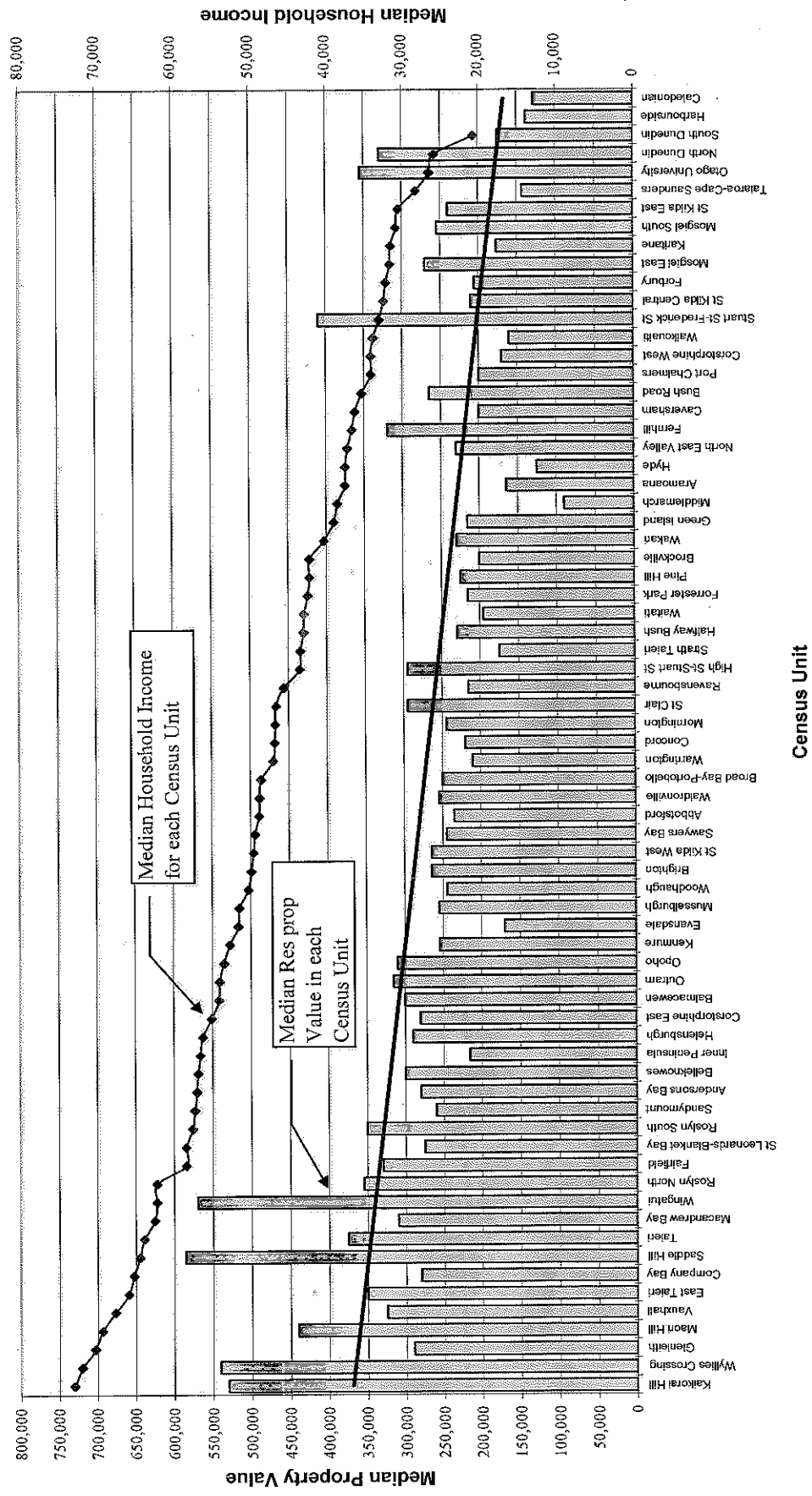
Yours faithfully

A handwritten signature in dark ink, appearing to be 'Peter Chin', with a stylized flourish extending from the end.

Peter Chin
Mayor

Encl

Correlation of Property Values to Household Incomes (Medians)



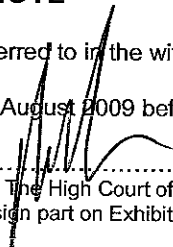
Constitution

Proposed Rules

Rules & Regulations of Stop The Stadium Society Inc.

EXHIBIT NOTE

This is the annexure marked "E" referred to in the within affidavit of **PHILIP JAMES HARLAND** and sworn at Dunedin this 7th day of August 2009 before me:

Signature: 
A Solicitor of The High Court of New Zealand
(Solicitor to sign part on Exhibit)

1. Registration

The Society shall be registered under "The Incorporated Societies Act, 1908".

2. Name

The name of the Society shall be "Stop The Stadium Society Incorporated"

3. Objects

The objects of the Society are:

- To ensure through effective action that the construction of a publicly funded stadium at Awatea Street is prevented from happening
- To ensure that the views of the members of the Society are communicated effectively through all means at the Society's disposal to the wider community
- To provide an asset base for associated research and communication in line with the Society's aims

4. Membership

The Management of the Society may from time to time make such regulations as it shall think fit regulating or restricting the admission of members, but unless otherwise determined, the following shall apply:

- Applications for membership shall be submitted on the approved application form and be accompanied by the appropriate annual subscription fee
- The application will be considered at the next duly convened Management meeting and the applicant will be elected to the appropriate membership on a simple majority decision.
- The Management of the Society will acknowledge such election to the applicant and notify them of the Rules of the Society
- The types of membership available to members shall be:
 - **Full Financial Membership**
Any person over the age of 18 years who has paid in full the annual subscription of \$10 (or \$2 for students, unwaged and senior citizens) shall be, upon election, entitled to be elected to any position within the Society, and vote at any meeting of the Society.
 - **Full Junior Membership.**
Any member between the ages of 12 and 18 on the 1st January in the year of application, and who has paid the annual subscription of \$10 (or \$2 for students and unwaged), shall be entitled upon election to become a full Junior member of the Society but shall not be entitled to vote at any meeting or hold any position on the Management of the Society.

5. Subscriptions

The annual subscription rate of the Society for Full Membership shall be set by the Management of the Society and in the 2008/09 year shall be set at \$10 (or \$2 for students, unwaged and senior citizens). Subscriptions shall be payable by the 1st September in each calendar year and those in arrears by the 1st October will be deemed to have forfeited the

privileges of Full Financial Membership and will be transferred to the Associate Membership roll.

6. Resignation of Members

- Any resignations from membership must be received in writing by the Management of the Society by the Annual General Meeting in any year.
Any members failing to notify the Society of their resignation shall be liable for all and any subscriptions owing or due.
- No persons ceasing to be members of the Society for whatsoever reason shall have any claim on the Society.
- Any member who is in more than 1 year in arrears of subscriptions will have their membership status changed to Associate membership unless a resignation notification has been received.

7. Management of the Society

The Society will be managed by a Management Committee consisting of those who have responsibilities for particular components of the Society's activities. The Management Committee of the Society shall be appointed at the Annual General Meeting and shall comprise:

- President
- Vice President
- Secretary
- Treasurer
- Communications Secretary

Also:

- Nominations for the positions on the Management Committee of the Society shall be made orally or in writing with the consent of the person nominated at the Annual General Meeting.
- The Management Committee has the power to co-opt to the Committee any other member who has provided their consent to fulfil an additional necessary role or to replace an elected member of the Committee who is unable to fulfil their role.
- The Management Committee may determine at any time to employ a professional person or business to undertake one or more of the necessary roles of the Society, such services to be overseen by the Management Committee.
- The Management Committee shall meet as often as considered necessary and may make, repeal and amend such regulations as they may from time to time consider necessary or appropriate for the well-being and administration of the Society; such regulations, repeals and amendments shall be binding on all Members until otherwise determined by the Management Committee or by the Members in a General Meeting provided that no such regulation shall be inconsistent with these Rules or "The Incorporated Societies Act, 1908" or its amendments.
- Meetings of the Management Committee may be held in person or by any other electronic means provided that each member of the Management Committee is not disadvantaged.
- Meetings of the Management Committee shall be called at any time by the Secretary or President but must be called by ten days after the receipt by the Secretary of a request from any two members of the Management Committee.
- At any Management Committee meeting five members shall constitute a quorum.
- The Chair of the meeting shall have a deliberative and casting vote.
- Any member of the Management Committee failing to attend three consecutive

meetings of the Committee without obtaining leave of absence shall, at the discretion of the Committee, cease to be a member thereof, and in that cause shall cease to hold any office in the Society in that year.

Power of the Management Committee:

- The Management Committee, in addition to other powers, shall have control of the funds and assets of the Society and shall have all such administrative powers as may be necessary for properly carrying out the objects of the Society in accordance with these Rules, including the appointment of people or businesses to carry out such administrative requirements and business of the Society as may be appropriate.
- The Management Committee shall, subject to any qualifications herein contained, also exercise in its absolute discretion the general powers of the Society as set out in the succeeding Rule.

8. General Powers

Without limiting or derogating from the powers expressed or implied herein or vested in the Society by law, the Society shall have the following special powers and authorities:

- To enter into any arrangement with any Governments or authorities, supreme, municipal, local or otherwise, that may be seen conducive to the objects of the Society, or any of them, and to obtain from any such Government or authority any rights, privileges and concessions which the Society may think it desirable to obtain and to carry out, exercise and comply with such arrangements, rights, privileges and concessions.
- To invest any funds of the Society not immediately required upon any investments authorised by the law of the Dominion of New Zealand for the investments of trust moneys.
- To affiliate with any Society, Body, or Association having objects substantially similar to the objects of this Society or to join or to co-operate with or subscribe to the funds of any such Society, Body or Association for the purpose of better attaining or otherwise furthering the objects, ends and interests of the Society or the Members thereof.
- No member or person associated with a member of the Society shall derive any income, benefit or advantage from the Society where they can materially influence the payment of that income benefit or advantage except where that income, benefit or advantage is derived from:
- Professional services to the Society rendered in the course of business charged at no more than current market rates, or: Interest on money lent at no greater than current rates.

9. General Meetings

- The Annual General Meeting of the Society shall be held on such day before the first day of September each year as shall, from time to time, be determined by the Management of the Society.
- The Secretary shall at least ten days before the Annual General Meeting in each year make public notice stating the date, time and place of the meeting together with particulars of the business to be transacted.
- The Management may at any time and shall within fourteen days after the requisition in writing of at least ten Members (which requisition shall set forth the business proposed to be transacted at each meeting) convene an extraordinary General Meeting for any specific purpose or purposes. The Secretary shall at least seven days before any extraordinary General Meeting make by public notice stating the date, time and place of the business to be transacted.
- At all General Meetings the chair shall be taken by the President or if he or she is not present, by the Vice President or, failing him or her, some Member chosen by the

meeting. Every Full Financial Member and every Associate Member shall have one vote, and in the case of equity of votes, the Chairman shall have an additional or casting vote.

- At any General Meeting twenty Members or one quarter of the financial Members for the time being of the Society, whichever shall be the lesser, shall constitute a quorum.
- At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is demanded (before or on the declaration of the result of the show of hands) by at least three Members and unless a poll is demanded a declaration by the Chairman that a resolution has been carried or carried by a particular majority or lost shall be conclusive. A poll shall be taken in such a manner and at such a place and time as the Chairman directs and the result of the poll shall be deemed a resolution of the meeting at which the poll was demanded.
- These rules may be altered, added to or rescinded by a resolution carried by a majority of at least two-thirds of those present and voting at a General Meeting the notice of which shall have specified the proposed alterations, addition or rescission; but nothing in this Rule shall prohibit the amendment at a General Meeting of any such motion for alteration or rescission.
- No addition to, or alteration of, the pecuniary profit clause or the winding-up clause or the amateur status of the Society shall be approved without the Inland Revenue Department's approval. or the amateur status of the Society shall be approved without the Inland Revenue Department's approval.

10. Common Seal

The Common Seal shall be kept in the custody of the Secretary. It shall not be affixed to documents except with the authority of a resolution of the Committee. The Seal shall be affixed by the Secretary or the Treasurer in the presence of two Members of the Committee who shall attest the affixing thereof.

11. Financial Year

The financial year of the Society shall begin on the 1st day of September in each year and end on the 31st day of August following.

12. Control of Funds

- All monies received by or on behalf of the Society shall be paid into an account or accounts kept at any Bank or Savings Bank constituted under "The Savings Bank Act, 1908", appointed by the Management, and cheques, bills and withdrawal forms drawn on any such accounts shall be signed by any two of the following:
 - President,
 - Secretary
 - Treasurer
 - or a Member of the Committee specifically named and authorised by the Committee for a particular account;
- Provided always that any cheques or other banking documents requiring endorsement may, if lodged for credit at any one of the Society's Bank Accounts, be endorsed by any one of the abovementioned of the Society.
- No moneys owing by the Society shall be paid out or any other payments made except with the authority of a resolution of the Management.

13. Auditor

An Auditor who shall not be a Member of the Management, shall be elected each year at the Annual General Meeting. A vacancy occurring in the office of auditor during the year shall be filled by the Committee.

14. Duties of Members

- All Members shall assist in the aims and objectives of the Society through the best means available to them.
- Every Member shall communicate to the Secretary any change of address; and all notices required by these Rules to be given to Members shall be deemed to have been duly given in due course of post if sent to registered address of the Member in the Society Books.

15. Winding Up

Upon the winding up of the Society, or on its dissolution by the Registrar, its property or assets shall be disposed of to the benefit of the Dunedin Foodbank after the payment of all outstanding debts and obligations including any related costs of winding up or dissolution.

**IN THE COURT OF APPEAL
OF NEW ZEALAND**

CA 269/2009

BETWEEN

STOP THE STADIUM INC

Appellant

AND

DUNEDIN CITY COUNCIL

Respondent

AFFIDAVIT OF ATHOL JAMES STEPHENS IN OPPOSITION TO APPEAL

Sworn 7 August 2009

**ANDERSON LLOYD
LAWYERS
DUNEDIN**

Solicitor: F B Barton

Defendant's Solicitor
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DUNEDIN 9054
Tel 03 477 3973
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AFFIDAVIT OF ATHOL JAMES STEPHENS IN OPPOSITION TO APPEAL

I **ATHOL JAMES STEPHENS**, of Dunedin, Manager, swear:

Background

1. I am the Finance and Corporate Support General Manager for the Dunedin City Council, a position I have held since 1996.
2. I am providing this supplementary affidavit for two reasons.
3. Firstly, to provide a detailed analysis of the funding models and in particular those relating to the financial impact on the Council as a result of the increased borrowing. This is necessary because it was simply not possible to have this evidence available during the High Court proceedings given the High Court proceeding moved to a substantive hearing within an extremely short timeframe. More importantly, it is necessary because Justice Chisholm in the High Court found it impossible to undertake any analysis of the financial aspects of the stadium given the complexity and given the lack of detailed financial analysis.
4. Secondly it is necessary because of the Appellant's use in the High Court of a spreadsheet which was not made available prior to the High Court proceeding and consequently I have never had the opportunity to comment on it. It was certainly never part of the Appellant's evidence in the High Court proceedings and despite Justice Chisholm's wariness, the Appellant seems to be again relying on it.
5. For ease and convenience and to ensure my additional evidence is considered in context I have set out below the key parts of my original affidavit sworn on 22 April. Where there is new and fresh evidence updating the Court I have highlighted those paragraphs in bold to distinguish between the original affidavit and the new evidence.

Evidence


6. **The evidence I will give describes the evolution of the changes in the costs of construction and of the funding sources. It then focuses on the effect of these changes on the finances of Dunedin City Council and on its ratepayers.**
7. **While the Stadium ownership and operational arrangements have changed, the total cost and therefore total funding needs have** not significantly altered from the project that was first consulted upon and approved and adopted in the Long Term Council Community Plan ("LTCCP").

Examination of Financing Arrangements

8. The financing arrangements for the Stadium have evolved over the three years they have appeared in Dunedin City Council Plans.

2007/08 Draft Annual Plan

9. The Draft 2007/08 Draft Annual Plan ("2007/08 Draft AP") envisaged a Stadium that would not be owned by the Dunedin City Council although it did not rule out ownership changes in the future (page 139, Annexure "A" Harland).
10. As a primary funder, it was envisaged that grants would be made to the Carisbrook Stadium Trust during construction amounting to \$91.359 million. This sum comprised an \$85 million contribution to the construction plus \$6.359 million to set up a fund that would be invested to provide major maintenance funding over the next fifty (50) years.
11. In the same 2007/08 Draft AP the other funding sources listed were (page 137):



Funders	\$
Otago Regional Council	37,470,000

University of Otago	10,000,000
Otago Community Trust	10,000,000
'Other' funding sources (membership, naming rights, founders club)	42,530,000
Sale of Carisbrook	3,000,000
Sub total	103,000,000
DCC - Construction	85,000,000
Total Funding and Construction Cost	188,000,000
DCC - 50 year major maintenance fund	6,359,000
Total Funding, Construction and major maintenance	194,359,000

12. In addition the development costs were recorded (page 137):

	\$
Stadium works, escalation, contingency, consultancy fees, land costs, trusts costs	150,650,000
Fixed Roof	37,350,000
	188,000,000

13. The Funding Sources and Development Costs were subsequently included in the 2007/2008 Annual Plan incorporating amendments to the 2006/07-2015/16 Community Plan (page 134).
14. **For its share of Stadium funding (\$85m for construction plus \$6.359m for the major maintenance fund = \$91.359m) Dunedin City Council proposed raising debt. It proposed servicing and repaying the debt over twenty (20) years by additional rates and an additional \$3 million of additional dividends per year from Council-owned companies. Two rating options were proposed - an addition to the capital value based general rate and a targeted rate which itself had two components (page 141 – Annexure "A" Harland).**

15. Following submission and debate, the Council decided on Option One - General Rate on Capital Value as the appropriate method of rating. This meant that the average value residential property would pay, over the ten years of the Plan, annual amounts rising to a peak of \$90 in 2011/12, falling to \$75 in 2016/17 (page 107, Annexure "A" Harland), as in the table below:

Option One - General Rate on Capital Value

Additional rates payable on the average value residential property in Dunedin

<i>Capital Value</i>	<i>07/08</i>	<i>08/09</i>	<i>09/10</i>	<i>10/11</i>	<i>11/12</i>	<i>12/13</i>	<i>13/14</i>	<i>14/15</i>	<i>15/16</i>	<i>16/17</i>
\$209,000 (average value)	8	32	77	88	90	87	84	81	78	75

16. The effect on the rates on the average value residential property is set out in the table in para 15.

2008/09 Draft Annual Plan

17. While the Draft 2008/09 Annual Plan did not change the financial and rating plan, it did signal clearly that "other options for the funding, ownership and governance of the stadium" were under consideration (page 13, Annexure "F" Harland)
18. The total construction cost of \$188,000,000, as indicated in the 2007/08 Draft Annual Plan, remained intact.
19. Ratepayer funding, as resolved in the 2007/08 Annual Plan, also remained the same. The draft 2008/09 Annual Plan was released on 15 March 2008.

Council meeting of 17 March 2008

20. The 17 March 2008 meeting received further details of the proposals on "funding, ownership and governance" that had been signalled on page 13 of the 2008/09 Draft Annual Plan (Annexure "F" Harland).
21. The Council confirmed the formation of a Council-owned venues management company to own and operate the stadium. **This company was provisionally named Otago Venues Limited but later came to be known as Dunedin City Venues Limited (DCVL). For ease of reference DCVL will be used throughout this affidavit to refer to the council owned company to which the asset would be transferred on completion.**
22. The accounting transactions to reflect Dunedin City Council's direct ownership up to completion, the transfer to the Council-owned Venues company (DCVL), the repayment by and assumption of debt by the Council and DCVL respectively, were all reflected in the 2008/09 Annual Plan (pages 11, 12).
23. **Dunedin City Council had been considering transferring the management and/or ownership of a number of existing facilities into a council controlled organisation to enhance the governance and management to obtain synergies with their operations (e.g. joint ticketing and marketing) and ensure they are operated with a commercial focus. Following the decision to proceed with the stadium, it was appropriate that this facility be managed and owned under a council controlled organisation structure.**
24. **As mentioned in paragraph 17 the Council had signalled to the public that funding, ownership and governance options were under consideration. This resulted in the Council considering at its meeting on 17 March 2008 a change to the ownership, governance and financial arrangements that were beneficial to the local authority, ratepayers and their finances. This involved recording the revenues, expenses, capital expenditure and debt associated with the new stadium on the Council's books until the new stadium was completed. On completion of the stadium, the Council would transfer it, at cost, to DCVL.**

25. In preparation for the 17 March 2008 meeting, modelling was undertaken to achieve the right balance between the amount of debt in DCVL and the ratepayer contribution, in order to get the best outcome for the Council and ratepayers.
26. The stadium debt accrued by the Council at the end of the construction period was forecast at the 17 March 2008 Council meeting to be \$89 million (\$85 million Council contribution plus \$4 million interest, see paragraph 27 below). This, plus further debt of \$6.359 million to establish the maintenance fund, less \$3 million (a scheduled dividend payment in 2010/11 from DCHL towards the stadium), had the combined debt of \$92.3 million in DCVL.
27. During the construction period, a ratepayer contribution towards the interest cost is phased in to a maximum of \$5 million per annum. Interest expense over and above the \$5 million per annum is capitalised into the debt. The forecast of interest expense over and above the \$5 million per annum during the construction period was \$4 million, bringing the combined debt to \$89 million (\$85 million plus \$4 million).
28. The annual debt servicing costs were forecast to be \$10 million per annum based on an interest rate of 9% and a 20 year table loan. The debt servicing costs would be met through payments made to DCVL by Council-owned companies. The effective cost of this debt servicing would be met as follows:
- Ratepayers would contribute \$5 million (through a reduction in dividends received from Council-owned companies);
 - Council-owned companies would contribute \$3 million from their available cashflow; and
 - Tax savings of \$2 million would be available to Council-owned companies.

Annexed and marked "AJS2" is a calculation of the tax savings available.

29. Following the publication of the Draft 2008/09 Annual Plan "The Council Stadium Stance" was published, contemporaneously with the draft Plan, in the Otago Daily Times on 29 March 2008 (Annexure "G" Harland). It invited submissions on its proposal, along with submissions on the draft Plan. Among others was a heading "What will it cost ratepayers?" The tables indicate an average saving to ratepayers over the ten years to 2017/18, of 25%, by using a Council-owned company to own the stadium. The average value residential property would pay, in 2010/11, \$88 per annum towards the Stadium if it was in direct council ownership but only \$66 in a Council Controlled Trading Organisation ownership (DCVL). Financial efficiencies in the group of council-owned companies will permit loss offsets and deductions. These advantages are offset by a reduction in dividends to Dunedin City Council, the shareholder, of \$5 million from its Holding Company, Dunedin City Holdings Limited. This revenue loss from the companies is recovered by an increase in general rates of \$66 per annum for the average value residential property **during the construction period and a further 20 years until the debt is repaid.**
30. "The Council's Stadium Stance" also tabulates the reduction in total rates between 2008/09 and 2017/18 achieved by using a Venues Company instead of direct Council ownership. Again, the savings, on average, are 25%.

Post 17 March 2008 - Private Sector Debt

31. Following the 17 March 2008 meeting, further reports from, and discussions with, the Carisbrook Stadium Trust disclosed a change in the assumption about the timing of the receipt of what is known as Private Sector Funding (PSF). Until 17 March 2008, it had been assumed that all of the PSF (lounge memberships, sponsorships, corporate boxes, open club reserves etc) would be received in full, in advance of stadium completion. The new assumption was that only 53% of PSF would be received in advance of opening.
32. The impact of the change in timing of PSF was to require \$19.2 million of new debt on the Council's books, to be serviced by receipts from further sales of lounge

memberships, sponsorships and corporate suites. This is noted on page 156 of the adopted 2008/09 Annual Plan, a copy is annexed and marked "AJS1".

33. This change had no effect on the cost to ratepayers as the forecast Stadium financial performance contained enough cash to service this debt.

2008/09 Annual Plan

34. The 2008/09 Annual Plan incorporated the recommendations from the 17 March 2008 Council meeting, revised assumptions regarding the timing of capital expenditure payments, the timing of revenues from other sources and provided for an amount of debt to remain on the Council's books after the stadium is transferred into DCVL relating to the delayed PSF (explained in paragraphs 31 – 33).
35. Under the 2008/09 Annual Plan, all revenues, expenses, capital expenditure and debt associated with the construction phase of the new stadium would be recorded on the Council's books. On completion of the stadium, the Council would transfer it, at cost, into DCVL. It assumed around 53% of the PSF would be received prior to this transfer with the remainder to be received after the stadium was transferred into DCVL, between the 2011/12 and 2020/21 years.
36. The total forecast for PSF was \$54.8 million, comprising the \$45.5 million capital contribution towards the stadium and \$6.7 million interest costs incurred over the 10 years that it took to repay the PSF loan.
37. The ownership and operation of the stadium by DCVL reduced the charge on ratepayers. For the average residential ratepayer, the annual contribution towards the stadium was forecast to be \$66 per annum.
38. The stadium debt accrued by the Council at the end of the construction period was forecast to be \$91.7 million including the maintenance fund, \$0.6

million less than that forecast on 17 March 2008 due to revised assumptions discussed in paragraph 34. Debt servicing costs of \$10 million were forecast based on an interest rate assumption of 9% and a 20 year table loan.

Variation in Costs between the 2008/09 Annual Plan (incorporating amendments to the 2006/07–2015/16 Community Plan), the Draft 2009/10-2018/19 Community Plan and the 2009/10-2018/19 Community Plan

39. During the last six months of 2008 and the first weeks of 2009 in the lead up to the preparation of the draft 2009/10-2018/19 Community Plan, more details emerged on Stadium costs.
40. The cost of acquiring unimpeded access to the land rose because the relocation costs of one company increased by \$3 million. An anticipated surplus of \$5.5 million on the sale of Carisbrook, which was to have been credited to the land cost, proved unattainable. Other, smaller, increases of \$1.5 million brought the total increase to \$10 million.
41. There remains the possibility of a surplus on the sale of Carisbrook. Independent valuation of the Otago Rugby Football Union's land and buildings, which are zoned industrial, suggest there could be a surplus of \$1 million to \$2 million even at current prices, provided the Council does not wish to use the assets for non-commercial purposes.

Variation in Funding Sources between the 2008/09 Annual Plan (incorporating amendments to the 2006/07–2015/16 Community Plan), the Draft 2009/10-2018/19 Community Plan and the 2009/10-2018/19 Community Plan

42. The Community Trust of Otago's contribution has dropped from \$10 million (identified in the 2007/08 and 2008/09 Annual Plans) to \$7 million (now included in the 2009/10-2018/19 Community Plan).

43. Private Sector Fundraising (PSF) proved more difficult than expected, so that by the time the Council met on 9 February 2009 to approve its Draft 2009/10-2018/19 Community Plan, all but 3% of PSF was assumed to be received **in annual instalments after opening day**, as opposed to lump sums in advance.
44. Further, it was assumed that by the time the Stadium was completed and opened, 75% of the lounge memberships and 75% of the Open Club Reserve seats would have been sold, in contrast to the previous estimate of 100%.
45. The effect of paragraphs 43 and 44 was to require an increase in private sector debt from the \$19.2 million noted in the final 2008/09 Annual Plan to the \$42.645 million reported to the Council meeting of 9 February 2009. This included an underwrite of \$15 million, assumed not received until 1 July 2009.
46. On an annual basis, a percentage of the income from private sector membership products will be used to repay the debt relating to PSF over ten years starting at \$29.1 million when the stadium is transferred into DCVL. For the first five years of operations this is 75% and for the remainder of the PSF loan period this is 70%.
47. In the final 2009/10 Community Plan the estimate of private sector debt reduces to \$29.1 million at the time the stadium is transferred into DCVL owing to the early receipt of the Crown's \$15 million. It continues to be financed by the instalments receivable from the buyers of seating products over five and ten year terms.
48. Contracts signed to date (as at 5 August 2009 \$26.82 million of PSF is contracted with a further \$5.57 million of seating products under serious consideration, total of \$32.39 million) indicate that the instalment payments after opening will service the debt raised prior to opening.

49. The draft 2009/10-2018/19 Community Plan assumed a contribution in the form of an underwrite of up to \$15 million from the Crown, to be made available on 1 July 2011.
50. A cash grant of \$15 million net by Central Government, payable two years earlier than assumed, on 1 July 2009, is now identified in the 2009/10-2018/19 Community Plan. The confirmation of the receipt of the Crown's \$15 million on 1 July 2009, instead of an underwrite on 1 July 2011, saves \$2 million in interest costs during the construction period. It also means that the 9 February 2009 Council resolution 7e requiring a funding source to meet the \$15 million shortfall in PSF was confirmed.

Variation in Debt between the 2008/09 Annual Plan (incorporating amendments to the 2006/07-2015/16 Community Plan), the Draft 2009/10-2018/19 Community Plan and the 2009/10-2018/19 Community Plan

51. The variation in debt referred to in paragraphs 52 to 59 relates to the amount of debt for the stadium when it is completed, operational and transferred into DCVL. It excludes the debt relating to PSF explained in paragraphs 31-33 and 43-47.
52. The debt on completion of the stadium in the 2008/09 Annual Plan (incorporating amendments to the 2006/07-2015/16 Community Plan) was \$91.7 million.
53. The debt on completion of the stadium in the 2009/10-2018/19 Community Plan is \$109.9 million. The increase of \$18.2 million is made up of the \$10 million increase in land costs (refer to paragraphs 39 and 40), a net reduction in other funding sources of \$3.2 million (refer to paragraphs 41-50), additional interest expense capitalised during construction of \$2 million and a reduction of \$3 million in dividend from DCHL (explained in paragraph 55).

54. The assumptions retained for PSF are conservative. Current sales levels continue to improve. If sales of lounge membership and open club reserve seats exceed 75% by the opening date of the stadium, (see paragraph 44) the bridging loan debt, presently forecast at \$29.1 million, will be paid off faster than the ten years forecast. This will improve the financial performance of DCVL.
55. In the original stadium funding model (2007/08 Annual Plan and draft 2008/09 Annual Plan), the Council received additional dividend income from the Council-owned companies of \$3 million per annum, for 20 years, from the 2010/11 year. The Council used this funding to repay debt relating to the stadium. When the 17 March 2008 decision was made to transfer the ownership of the stadium into DCVL from the 2011/12 financial year, the \$3 million planned dividend for the 2010/11 year was used to reduce the stadium debt. This assumption has been reviewed in detail for the 2009/10 Community Plan and it was felt that by leaving this funding within the Council-owned companies it increases the capacity within the group of companies to manage any unforeseen risk.
56. Interest rates for the 2008/09 Annual Plan were assumed to be 9%. As short term interest rates fell in late 2008 and early 2009, the rate used for the Stadium financing calculation was able to be reduced to 7% on the long term debt to be serviced after the stadium was completed. In the draft 2009/10-2018/19 Community Plan 7% was assumed, and in the final 2009/10-2018/19 Community Plan a combination of interest rates of 6.29% for five years and 7.47% for the remaining 15 years. The effect of a 2% reduction in the rate of interest (9% in 2008/09 less 7% in draft 2009/10 plan) on \$109.9 million is to reduce interest expense in Year 1 by \$2.197 million. Over twenty years the saving is \$32.9 million. The range of interest rates used over the various plans is attached as Annexure "AJS3".
57. The table below compares the debt to be serviced on completion of the stadium in the final 2008/09 Annual Plan with the draft and final 2009/10-2018/19 Community Plans:

	\$ Million	\$ Million	\$ Million
Planning Document	2008/09 Final Annual Plan	2009/10-2018/19 Draft Community Plan	2009/10-2018/19 Final Community Plan
Debt to be serviced post construction	\$91.7	\$108.8	\$109.9
Interest rate post construction	9.0%	7.0%	6.29% until April 2015 7.47% from April 2015
Interest and Principal Repayments per annum for a 20 year table loan	\$9.9	\$10.1	\$9.7 until April 2015 \$10.4 from April 2015

Annexed and marked "AJS4" is a spreadsheet which sets out the changes in funding, debt and borrowings from the start of the process to the current Final LTCCP.

58. In spite of this increase in debt in DCVL, the contribution from ratepayers has remained unchanged because interest rates have reduced by 2%, resulting in annual debt servicing costs of around \$10 million, the same level of annual debt servicing costs that the Council had forecast at the time of the 17 March 2008 decision.
59. Since the draft 2009/10-2018/19 Community Plan was issued, interest rate protection contracts for \$90 million (83% of the DCVL's debt) have been signed for five years from April 2011 to April 2016 at a weighted average interest rate of 6.29%. The interest rate assumed from May 2017 is 7.47% and has been based on advice from Dunedin City Treasury Limited. While the eventual interest rate is almost certain to be different in May 2016, the \$90 million of contracts already in place for the first five years at 6.29% provides a substantial mitigation of interest rate risk.

60. The Council's LTCCP and any amendments are subject to audit by Audit New Zealand. The proposal in the Draft 2008/08 Annual Plan constituted an Amendment under the Local Government Act 2002. The Draft 2009/10 Community Plan was also subject to audit. Both audits examined the calculations of debt servicing costs and the effect on the Council's finances and ratepayers. No errors were noted and an unqualified audit was achieved.
61. Dunedin City Council holds a AA- credit rating issued by Standard & Poor's. Throughout the debate on the Stadium Standard & Poor's have been kept fully informed of the effect on the Council's financial position. They have neither reduced the rating nor altered the "Outlook" which remains "Stable".

Summary of Cost to the Ratepayers

62. The cost to the average value residential property ratepayer over the two years of construction and twenty (20) years of the term debt, in the three Council Plans in which the Stadium has appeared, are:

Year	Plan Title	Average Value Residential Property Rates	
2007/08	Draft Annual Plan	2009/10	\$77
		2011/12	\$90
		2016/17	\$75
2007/08	Adopted Annual Plan	Same as Draft 2007/08 Plan	
2008/09	Draft Annual Plan	Same as Draft and Adopted 2007/08 Plans	
2008/09	"The Council's Stadium Stance"	\$66 per annum for 22 years	
2008/09	Adopted Annual Plan	\$66 per annum for 22 years	
2009/10- 2018/19	Draft Community Plan	\$66 per annum for 22 years	
2009/10-	Adopted Community Plan	\$66 per annum for 22 years	

Year	Plan Title	Average Value Residential Property Rates
2018/19		

Generally Accepted Accounting Practice

63. The affidavit of Nicola Holman, in section 4.7, states "I consider the changes I have identified to be both material and significant in terms of generally accepted accounting practice". Audit New Zealand audits the draft version of each Long Term Council Community Plan or Amendment thereof. Two audits of the Plans featuring the Stadium proposal have received unqualified opinions.
64. It is not within Dunedin City Council's power to change generally accepted accounting practice. Its task is to ensure that the presentation of substantive decisions of the Council on ownership, debt, assets, revenue and expense reflect and comply with generally accepted accounting practice. Two unqualified audits suggests the Council fully complies.

Plaintiff's Statement of Claim

65. Reference 8(a) - "Cost has increased by \$10 million". This is correct and is explained in paragraph 40 above.
66. Reference 8(b) - The Community Trust of Otago's contribution has indeed dropped from \$10 million to \$7 million.
67. Reference 8(c) - The "external contribution" of \$15 million has been confirmed as a cash grant of \$15 million net by Central Government, payable on 1 July 2009. Until confirmation of the 1 July 2009 cash grant, the external contribution was treated as an underwrite of private sector funding, available up to \$15 million and not accessible until 1 July 2011.

68. Reference 8(d) - The original bridging loan required was \$19.2 million (refer paragraph 26), which rose to \$42.645 million by the 9 February 2009 Council meeting. The earlier than expected Crown contribution of \$15 million has been used to reduce debt and interest during construction, leaving the requirement for bridging finance much lower at \$29.1 million. This was not reflected in the draft 2009 LTCCP but has been reflected in the final 2009/10-2018/19 Community Plan.
69. Reference 8(e) - Details of construction and land costs were deliberately kept confidential while commercial negotiation continued.
70. Reference 8(f) - Private Sector Funding. **I have addressed this at paragraphs 31, 32, 33, 43, 44, 45 and 54.** The assumptions retained for PSF are conservative. Current sales levels continue to improve. If sales of lounge membership and open club reserve seats exceed 75% of the available numbers by the opening date of the stadium the bridging loan debt, presently forecast at \$29.1 million, will be lower and the bridging loan will be paid off faster than the ten years forecast. This will improve the financial performance of the Venue.

Appellant's Spreadsheet

71. **An analysis of the Appellant's spreadsheet reveals the following misconceptions and oversights:**
- **'Bridging finance servicing' is included as an expense item in the 'Draft Plan' column. I assume they are referring to the interest cost on the PSF loan. This is mixing capital expenditure and operating expenditure. The interest costs on the PSF loan will be an operating expenditure item, funded by income from private sector membership products when the stadium is operational. This expenditure is not part of the capital cost of the stadium. These costs are incurred after the stadium is completed and operational from August 2011.**
 - **The PSF loan was part of the 2008/09 Annual Plan. The associated interest costs existed at the time the 2008/09 Annual Plan was confirmed. Although the amount of the PSF loan changed by the time the draft 2009/10 Community Plan was approved, it wasn't a new line item. The**

loan relating to PSF was forecast in the 2008/09 Annual Plan to be \$19.2 million at the time the stadium was transferred into DCVL.

- The investment in both capital expenditure and the creation of a maintenance fund of \$194.4 million in the 2008/09 Annual Plan increased to \$204.4 million in the draft 2009/10 Community Plan, an increase of \$10 million as explained in paragraphs 39 and 40.
- The Council contribution in the draft 2009/10 Community Plan increased by the additional land costs and the net reduction in other funding sources. The Council contribution towards the stadium construction was \$99.7 million (up from \$85 million) in the draft 2009/10 Community Plan. With the benefit of hindsight and as part of the review of this spreadsheet I have noticed that the explanation of stadium funding included within the 2009/10 Draft Community Plan was incorrect for these reasons:
 - An external contribution of \$15 million should not have been listed. Although this is separately identified in the final 2009/10 Community Plan, in the draft 2009/10 Community Plan, the \$15 million shortfall in PSF was included as an underwrite within the PSF line.
 - The Dunedin City Council contribution should have been \$99.7 million, reflecting the increase in land costs and net reduction in other funding sources.
 - The Private Sector Funding contribution should have been \$43.8 million. This included the \$15 million shortfall (refer paragraph 47).
 - The total should have been shown as \$198 million, not \$200 million.

I would note that although this information was not recorded correctly in the Draft 2009/10 Community Plan it was made clear to the Council at the time of the 9 February 2009 Council meeting that the Council would be funding the net shortfall in the project. It was also made clear to the 9 February 2009 Council meeting and on page 31 of the 2009/10 draft Community Plan, that due to falling interest rates, the cost to ratepayers, as indicated in the 2008/09 Annual Plan, did not need to be increased. The funding information has been updated correctly in the 2009/10 LTCCP.

72.

In summary, there has been a reduction in PSF which has been offset by a \$15 million grant from Central Government. In addition, the total cost of the

stadium has increased and there is a reduction in other funding sources, both of which are funded by additional borrowings by the Council. When the stadium is completed, operational and transferred into DCVL, the debt servicing costs are not significantly different to those forecast at the time the 2008/09 Annual Plan was approved due to a reduction in interest rates. The cost to the average value residential property ratepayer is also unchanged.

SWORN at Dunedin)

this 7th day of August 2009)

before me:)



A Solicitor of the High Court of New Zealand

Nathan Mackay Laws
Solicitor
Dunedin

AJS2

Calculation of tax savings for first ten years of Stadium Operations

	Year 1	2	3	4	5	6	7	8	9	10
DCVL Taxable Income/(loss) \$'000										
Operating cash flow	5,664	5,137	5,069	3,883	3,778	3,394	3,325	3,378	3,345	4,720
Less:										
Stadium interest	(8,787)	(8,379)	(7,943)	(7,558)	(7,426)	(7,848)	(7,385)	(6,887)	(6,350)	(5,708)
Stadium depreciation	(3,554)	(3,554)	(3,554)	(3,554)	(3,554)	(3,554)	(3,554)	(3,554)	(3,554)	(3,554)
Tax loss before subvention payments and loss offsets	(6,677)	(6,796)	(6,428)	(7,229)	(7,202)	(8,008)	(7,614)	(7,063)	(6,559)	(4,542)
Group taxable income excl DCVL and DCHL (average prev years)	18,000	18,000	18,000	18,000	18,000	18,000	18,000	18,000	18,000	18,000
Less:										
Subvention payments and loss offsets	(6,677)	(6,796)	(6,428)	(7,229)	(7,202)	(8,008)	(7,614)	(7,063)	(6,559)	(4,542)
Taxable income	11,323	11,204	11,572	10,771	10,798	9,992	10,386	10,937	11,441	13,458
Tax @ 30%	3,397	3,361	3,472	3,231	3,239	2,998	3,116	3,281	3,432	4,037
Tax on \$18m, pre Stadium	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400
Tax saving	2,003	2,039	1,928	2,169	2,161	2,402	2,284	2,119	1,968	1,363
Average annual tax saving	2,044									

EXHIBIT NOTE

This is the annexure marked "AJS2" referred to in the within affidavit of **ATHOL JAMES STEPHENS** and sworn at Dunedin this 7th day of August 2009 before me:

Signature:.....
A Solicitor of The High Court of New Zealand
(Solicitor to sign part on Exhibit)

AJS 3

Interest rates and interest expense

Interest rates have varied widely over the Stadium consultation phase. The assumptions used for public consultation documents are tabled below.

Table of Interest rate changes during Stadium consultation phase

DCC Plan	Status			Interest rate %
2007/08	Draft			7.25
2007/08	Final			8.50
2008/09	Draft			8.50
2008/09	Final			9.00
2009/10	Draft	Construction phase	1 st \$ 40m	9.00
			> \$40m	7.00
		Post construction		7.00
2009/10	Final	Construction phase	1 st \$ 40m	9.62
			Next \$50m	6.82
			Over \$90m	7.47
		Post construction	5 years	6.29
		Post construction	After 5 years	7.47

EXHIBIT NOTE

This is the annexure marked "AJS3" referred to in the within affidavit of **ATHOL JAMES STEPHENS** and sworn at Dunedin this 7th day of August 2009 before me:

Signature: 
A Solicitor of The High Court of New Zealand
(Solicitor to sign part on Exhibit)

'AJS 4'

EXHIBIT NOTE

This is the annexure marked "AJS4" referred to in the within affidavit of **ATHOL JAMES STEPHENS** and sworn at Dunedin this 7th day of August 2009 before me:

Signature:.....
A Solicitor of The High Court of New Zealand
(Solicitor to sign part on Exhibit)

	2007/08	2008/09	2009/19	2009/19
	Draft Annual Plan	Final Annual Plan	Draft LTCCP	Final LTCCP
INVESTMENT				
Cost of Stadium				
Stadium works, escalation, contingency, consultancy fees, trust costs, roof	168,000,000	168,000,000	169,081,000	169,378,000
Land acquisition costs	20,000,000	20,000,000	35,598,000	35,598,000
Less land and rental recoveries			(6,682,000)	(6,719,000)
Total Net Cost	188,000,000	188,000,000	197,997,000	198,257,000
Maintenance Fund Investment				
DCC/CCO (50 year capital maintenance requirement)	6,359,000	6,359,000	6,359,000	6,359,000
Total Including Capital Expenditure and Maintenance	194,359,000	194,359,000	204,356,000	204,616,000
FUNDING				
Funding of Stadium				
Dunedin City Council	85,000,000	85,000,000	99,660,000	98,475,000
Otago Regional Council	37,470,000	37,500,000	37,500,000	37,500,000
University of Otago	10,000,000	10,000,000	10,000,000	10,000,000
Community Trust of Otago	10,000,000	10,000,000	7,000,000	7,000,000
Private sector funding	42,530,000	45,500,000	43,837,000	30,282,000
Sale of Carlsbrook	3,000,000	0	0	0
Government	0	0	0	15,000,000
Subtotal - Funding for Capital	188,000,000	188,000,000	197,997,000	198,257,000
Maintenance Fund				
DCC/CCO (50 year capital maintenance requirement)	6,359,000	6,359,000	6,359,000	6,359,000
Total Funding Requirement	194,359,000	194,359,000	204,356,000	204,616,000
DEBT				
DCC/CCO Stadium Debt on Completion				
Debt relating to construction (including capitalised interest)	85,000,000	88,314,000	105,402,000	103,525,000
Maintenance Fund	6,359,000	6,359,000	6,359,000	6,359,000
Less Dividend from DCHL		(3,000,000)	(3,000,000)	
Total Debt on Completion	91,359,000	91,673,000	108,761,000	109,884,000