

**IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY**

CIV-2009-412-337

UNDER

Judicature Amendment Act 1972

IN THE MATTER

of an application for review

BETWEEN

STOP THE STADIUM INC a duly
incorporated company having its
registered office at Dunedin

Plaintiff

AND

DUNEDIN CITY COUNCIL being
a territorial authority pursuant to
the Local Government Act 2002

Defendant

**AFFIDAVIT OF ATHOL JAMES STEPHENS IN OPPOSITION TO
APPLICATION FOR REVIEW AND INJUNCTION
Sworn 22 April 2009**

Next Event Date: Trial: Thursday 23 April 2009 at 12 pm, High Court
Christchurch

Judicial Officer: Justice Chisholm

ANDERSON LLOYD
LAWYERS
DUNEDIN

Solicitor: F B Barton

Defendant's Solicitor
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**AFFIDAVIT OF ATHOL JAMES STEPHENS IN OPPOSITION TO
APPLICATION FOR REVIEW AND INJUNCTION**

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

Qualifications

1. I am the Finance and Corporate Support General Manager for the Dunedin City Council, a position I have held since 1996.
2. My areas of responsibility include finance; support elected representatives; property management; property development; administration services; and asset management coordination.
3. Prior to my current position I held Financial Director and General Manager positions in multi-national oil field service companies in the Middle East.
4. I hold the qualifications of Bachelor of Arts and Bachelor of Commerce from the University of Otago.
5. I am also a member of the New Zealand Institute of Chartered Accountants.

Evidence

6. The evidence I will give concentrates on addressing the changes to the funding models and consequently the costs of the Stadium Project to the Dunedin City Council and its ratepayers.



7. The funding has not significantly altered from the project that was first consulted upon and approved and adopted in the Long Term Council Community Plan ("LTCCP").
8. In particular I will address each of the allegations and proposed changes referred to at paragraph 8 of the Statement of Claim and I will also comment on the evidence of Ms Nicola Holman.

Examination of Financing Arrangements

9. 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

10. 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).
11. 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.
12. In the same 2007/08 Draft AP the other funding sources listed were (page 137):

	\$
Otago Regional Council	37,470,000
University of Otago	10,000,000
Community Trust	10,000,000

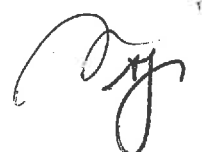


'Other' funding sources (membership, naming rights, founders club)	42,530,000
Sale of Carisbrook	3,000,000
	103,000,000
DCC - Construction	85,000,000
Total Construction Cost	188,000,000
DCC - 50 year maintenance fund	6,359,000
	<hr/> 194,359,000

13. 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
	<hr/> 188,000,000

14. 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).
15. Dunedin City Council proposed raising debt for its share of Stadium funding. It proposed repaying the debt over twenty (20) years by a combination of \$3 million of additional dividends from Council-owned companies and additional rating. 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).
16. 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

<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

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 adopted 2007/08 Annual Plan, also remained the same. The draft Annual Plan was released on 15 March 2008.

Council meeting of 17 March 2008


20. The 17 March 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.
22. The accounting transactions to reflect Dunedin City Council's direct ownership up to completion, the transfer to the Council-owned venues management company, the repayment by and assumption of debt by DCC and the venues company respectively, were all reflected in the final, adopted 2008/09 Annual Plan (pages 11, 12).
23. 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 CCTO ownership. 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. This revenue loss from the companies is thus recovered by an increase in general rates of \$66 per annum for the average value residential property.
24. "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

25. Following the 17 March 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, it had been assumed that all of the PSF (memberships, sponsorships, suite rentals 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.
26. 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**".
27. This change had no effect on the cost to ratepayers as the forecast Stadium financial performance contained enough cash to service this debt.
28. 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.
29. The cost of acquiring unimpeded access to the land rose. The relocation costs of one company increased by \$3 million. An anticipated surplus of \$5 million on the sale of Carisbrook, which was to have been credited to the land cost, proved unattainable. Other, smaller, increases of \$2 million brought the total increase to \$10 million.



Draft 2009/10-2018/19 Community Plan

30. Private Sector Fundraising 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 by instalments in arrears, as opposed to lump sums in advance.
31. 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%.
32. The effect of paragraphs 30 and 31 was to require an increase in bridging finance from the \$19.2 million noted in the adopted 2008/09 Annual Plan to the \$42.645 million reported to the Council meeting of 9 February 2009.
33. 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.
34. Interest rates for the adopted 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%.
35. A 2% reduction in interest rates on the \$108 million of debt in the Venues Company meant that, as the cash effects were flowed through the group of Council companies, in spite of increased costs of \$10 million, it became apparent that no further reduction in dividends to Dunedin City Council would be required to service the Stadium debt. Accordingly no further cost would be imposed on ratepayers.



36. The \$15 million grant and the 2% reduction in interest rates has left the ratepayer contribution at \$66 per annum for the average value residential ratepayer. About 63% of residential properties have values below the average.

Post Release of the Draft Community Plan

37. The assumption of a 7% interest rate has been included in the model that forms the basis of the draft 2009/10-2018/19 Community Plan. Since the draft was issued, interest rate hedge contracts for \$90 million (83% of the Venues Company's debt) have been signed for five years from April 2011 to April 2016 at a weighted average interest rate of 6.30%. This provides further savings of \$0.63 million per annum for five years over and above the figures in the draft 2009/10-2018/19 Community Plan.
38. The confirmation of the receipt of the Crown's \$15 million on 1 July 2009, instead of an underwrite on 1 July 2011, saves in excess of \$2 million during construction. This is also not included in the 2009/10-2018/19 draft Community Plan.
39. Also not included is 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.

Summary of Cost to Ratepayers

40. 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	

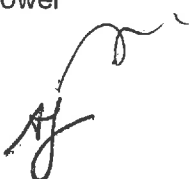
Generally Accepted Accounting Practice

41. 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 Annual Plan, Long Term Council Community Plan or Amendment thereof. All three audits of the Plans featuring the Stadium proposal have received unqualified opinions.
42. 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. Three unqualified audits suggests the Council fully complies.



Plaintiff's Statement of Claim

43. Reference 8(a) - "Cost has increased by \$10 million". This is correct and is explained in paragraph 29 above.
44. Reference 8(b) - The Community Trust of Otago's contribution has indeed dropped from \$10 million to \$7 million.
45. 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.
46. 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 has not been reflected in the draft 2009/10-2018/19 Community Plan but will appear in the final version.
47. Reference 8(e) - Details of construction and land costs were deliberately kept confidential while commercial negotiation continued.
48. Reference 8(f) - Private Sector Funding. I have addressed this at paragraphs 25, 26, 27 and 30, 31 and 32. 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

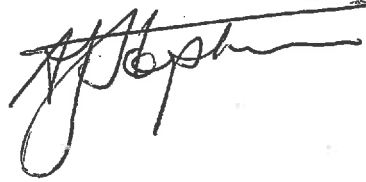


and the bridging loan will be paid off faster than the ten years forecast.
This will improve the financial performance of the Venue.

SWORN at Dunedin)

this 22nd day of April 2009)

before me:)



A Solicitor of the High Court of New Zealand

"AJS1"

Compilation of the Budgets

The budgeting process used by the Council has not been changed. However, in preparing the 2008/09 – 2017/18 ten-year forecast financial information, activity management plans and detailed budgets have been reviewed and updated with current and more up-to-date information.

A forecast of the 2007/08 year has been included in the Plan for information only, this is not an amendment to the 2007/08 Annual Plan. The forecast differs from the 2007/08 year included in the 2007/08 Annual Plan for the following reasons:

- Some carry forward budgets have been assumed so that capital expenditure budgets that were planned to be spent in the 2007/08 year will now be spent in the 2008/09 year (note that these have no impact on levels of service).
- The opening Balance Sheet position has been changed to reflect the 30 June 2007 Annual Report.

Other Budget Changes

Some of the larger changes that have been incorporated into the budgets for the 2008/09 – 2016/17 years are discussed below.

Stadium

The 2007/08 Annual Plan and the Draft 2008/09 Annual Plan assumed that the construction of the stadium and the receipt of revenues from the sale of seats in the stadium would be recorded on the books of the Carisbrook Stadium Trust. The Council would reimburse the Trust for its expenditures.

Confirmation in the Annual Plan of the recommendations in the 17 March 2008 report to the Finance and Strategy Committee, and following professional advice, the revenues, expenses, capital expenditure and debt associated with the new stadium are all now recorded on the Council's books.

On completion of the stadium, the Council will transfer it, at cost, into a Council Controlled Trading Organisation (CCTO). Around 53% of the private sector funding is forecast to be received prior to this transfer. The remaining 47% will be received by the Council between the 2011/12 and 2020/21 financial years. This means that an amount of debt, around \$19.2 million, will remain on the Council's books after the stadium is transferred into a 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.

The ownership and operation of the stadium by a CCTO reduces the charge on ratepayers. The table included on page 12 of this Plan compares the ratepayer contribution under direct Council ownership with the ratepayer contribution under a CCTO ownership structure.

Once the stadium is owned and operated by a CCTO, this removes the debt servicing costs from being a direct charge on ratepayers, but it does have the effect of reducing the dividends from the companies.

Transportation Operations

Additional funding of \$18.3 million is provided for capital expenditure on Transportation Operations activities. This overall increase incorporates the changes set out below. Note that this change incorporates a carry forward from the 2007/08 year also:

- Additional funding is included for Peninsula projects. This represents a continuation of the implementation of the Council's long-term vision of safe walking and cycling facilities around Otago Harbour. This project is funded up to 65% by Land Transport New Zealand (LTNZ).
- Additional funding is included for strategic transportation corridors. This is the result of the decision to proceed with the proposed new stadium. Additional land will be required and the road and bridge will be longer. This project is funded up to 65% by LTNZ.
- Funding is included for the Mosgiel Structure Plan. The Council has promoted a variation of residential expansion of Mosgiel, and to accommodate this expansion has provided funding for transportation infrastructure. This project is funded by LTNZ, development contributions and the Council.
- Funding for the Mosgiel Taieri Arterial Routes projects has increased by \$5.2 million. This increase has resulted from a more accurate assessment of these project costs. This project is funded up to 65% by LTNZ.

Dunedin Centre Redevelopment

Additional funding of \$16.7 million is provided for the Dunedin Centre redevelopment. This incorporates some additional design features including air conditioning and space for the Metro Cinema. See page 5 for more information on the redevelopment.

Taieri River Bridge Bypass

Funding of \$4.9 million is provided for the Taieri River Bridge Bypass. This expenditure will ensure the security of the city's raw water supply.

EXHIBIT NOTE

This is the annexure marked "AJS1" referred to in the within affidavit of **ATHOL JAMES STEPHENS** and sworn at Dunedin this 22nd day of April 2009 before me:

156

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

