

**DEVELOPMENT RELATIONSHIP MANAGEMENT
DEED – Awatea Street Site**

Between

The Carisbrook Stadium Charitable Trust

And

University of Otago

And

Dunedin City Council

And

Dunedin Venues Management Limited

Relationship Management and Development Deed – Awatea Street Site

Parties

1. **The Carisbrook Stadium Charitable Trust**, 9 Dowling Street, Dunedin ("the Trust") as agent for Dunedin City Council
2. **University of Otago**, Clock Tower Building, Leith Street, PO Box 56, Dunedin ("the University")
3. **Dunedin City Council**, a territorial local authority under the Local Government Act 2002 ("the Council")
4. **Dunedin Venues Management Limited**, 9 Dowling Street, Dunedin, a Council Controlled Organisation owned by the Dunedin City Council ("DVML")

Background

- A. The Trust and the University entered into a Heads of Agreement dated 20 September 2007 in relation to the potential collaborative development of a new multi-purpose stadium and University facilities on a site in Dunedin known as the Awatea Street site.
- B. The Parties have agreed on certain relationship principles governing their relationship going forward, and wish to record the processes they will engage in to manage that relationship and the development of the Site.
- C. The Trust will construct the Stadium on the Site as agent for the Council.
- D. The University has entered into a Land Purchase Agreement with the Council dated 19 April 2009 to acquire the University Land adjoining the west stand of the Stadium.
- E. The University will construct the University Building Space to provide facilities for the University and for Unipol Recreation Limited.
- F. The parties agree that their main common objective is the coordinated development of the University Building Space and the Stadium and that they will work together to define their Project Structures for their respective Developments in a collaborative manner to achieve this objective.
- G. A district plan change has been achieved by the Trust and the Council to enable the stadium and the University developments to proceed on the Site

It is agreed:

1. Definitions and Interpretation

Definitions

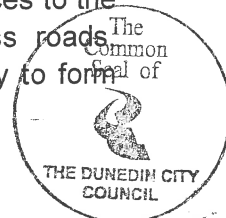
1.1 In this Deed:

"Business Day"

means a day other than a Saturday, Sunday or public holiday in Otago;

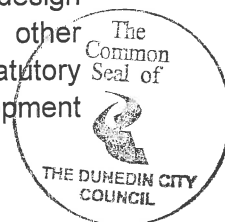
"Car Park"

means approximately 300 car parking spaces to the eastern side of the Site including access roads, kerbs, pavements and plantings necessary to form



this area, as marked in the Plan;

"Car Parking Space"	means each individual car parking space within the Car Park;
"Deed"	means this deed including any schedules and annexures and any variations agreed from time to time;
"Development"	means the design and construction of the Stadium, the University Building Space, the Plaza and the Car Park respectively, and any associated Infrastructure Works, roads, walkways and landscaping, to be built on the Site;
"Development Obligations"	means the obligations of the parties under clauses 6 to 13 inclusive of this Deed (including Schedules 1 to 3), and clauses 20, 22 and 24.3 so far as those provisions relate to the obligations under clauses 6 to 13 of this Deed;
"Infrastructure Works"	means works associated with the overall Development of the Site such as remediation, ground works, flood hazard mitigation works, and laying in services for utilities supply and drainage;
Land Area Proportion	Means the proportion that the area of the University Land plus one half of the Plaza Land bears to the area of the Site in each case as finally determined.
"Land Purchase Agreement"	means the Agreement between Dunedin City Council and University of Otago dated 19 April 2009;
"NZTA"	means New Zealand Transport Agency;
"Plan"	means the plan attached to the Land Purchase Agreement and attached to this Deed as Annexure 1;
"Plaza Land"	means a public pedestrian plaza area acting as a gateway linking the Development to the University campus area to the north west of the Site intended to be owned in common by the University and the Council in accordance with the Land Purchase Agreement Further Terms of Sale 2;
"Plaza Management Body"	means the body established under clause 13 to manage the activities on the Plaza following completion of the Development;
"Professional Services"	means all services provided by professional design and other consultants as well as any other associated fees and charges and any statutory services which may incur fees or development

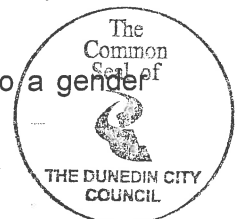


	levies;
"Project Structure"	in relation to a party, means its governance requirements for decision-making relating to the overall Development and this Deed, as well as its arrangements (including relevant contractual relationships) for managing the design and construction of its own Development within the Site.
"Site"	means the area within the red line as shown on the drawing attached in Annexure 2 (including any closed former public roads), subject to survey and subject to any boundary adjustments and/or the inclusion of any additional areas as determined by the Trust that do not materially affect the University Building Space or the Plaza;
"Stadium"	means a multi-purpose stadium with a maximum capacity of approximately 30,000 people comprising the playing surface, the stands, ancillary buildings (other than University Building Space), walkways and any landscape areas;
"University Building Space"	means the building or buildings the University intends to construct on the University Land, comprising up to approximately 13,400 m ² of gross building space, to provide facilities for the University and for Unipol Recreation Limited.
"University Land"	means that part of the Site comprising up to 8,943 square metres to be nominated for purchase by the University under the Land Purchase Agreement from within the area shown marked in yellow on the Plan attached to that agreement (and attached in Annexure 1) which includes the area on which the University intends to construct the University Building Space.
"University Link Building"	Means the building comprising part of the University Building Space and adjoining and partially supporting the west stand of the Stadium

Interpretation

1.2 In this Deed, unless the context requires otherwise:

- a. every covenant expressed to bind more than one person shall bind such persons jointly and each of them severally;
- b. reference to any party includes its successors or personal representatives and permitted assignees;
- c. reference to a person includes any entity or association of persons recognised by law;
- d. the singular includes the plural, and vice versa, and reference to a gender includes all genders;



- e. reference to any statute includes any statute amending, re-enacting or substituting for that statute and all subsidiary legislation for the time being in force;
- f. headings are used for convenience and shall not affect the construction of this Deed;
- g. where the day for doing an act or on which an entitlement is due to arise is not a Business Day, the day for doing the act or on which the entitlement arises shall be the next following Business Day;
- h. references to schedules, annexures and clauses are references to schedules, annexures and clauses in this Deed;
- i. the words "include", "including" and "for example" shall have no limiting effect.

2. Key Objectives and Strategy

2.1 The parties acknowledge that while each of the Trust and the University is independently responsible for its own Development within the Site, the Developments adjoin one another and careful coordination of the overall Development is a key objective of the parties.

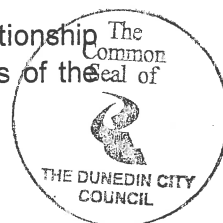
2.2 To give effect to that objective, the parties wish to collaborate with each other:

- a. to develop a consistent approach to their respective Developments on the Site, while recognising that each party is responsible for its own Development;
- b. to ensure the timing of construction of the University Building Space and the Stadium are aligned so far as is reasonably practicable such that Rugby World Cup events can be hosted at the Stadium in 2011;
- c. to develop the Project Structure of each Development in consultation with each other so that those Project Structures are consistent;
- d. to use, where reasonably acceptable, cross-representation on the project management component of each party's Project Structure in order to drive consistencies and economies where appropriate.

3. Relationship Principles

3.1 The parties agree that the following relationship principles will guide each of them in their dealings with the others under this Deed. Those principles are that each party will:

- a. create a relationship between the parties that enables them to work together to achieve the best possible individual outcomes but recognise each party's legitimate interests;
- b. recognise and value the others' skills and expertise;
- c. act in an open and transparent manner to the others including by communicating with the others openly, constructively and in a timely manner;
- d. establish and foster a long term cooperative and collaborative relationship that facilitates the efficient and effective pursuit of the key objectives of the parties;



- e. recognise where interdependence is appropriate and consult the others as appropriate, early, and with an open mind;
- f. cooperate and collaborate with the others at all times within the scope of this Deed to pursue their agreed objectives to the extent reasonably practicable;
- g. act collaboratively with the others in respect of their development of Project Structures to achieve their agreed objectives and conduct all consultation and negotiations in good faith;
- h. discuss the resolution of any issues or problems that may arise in relation to the interpretation or application of this Deed.

3.2 Notwithstanding anything in this clause or elsewhere in this Deed, nothing in this Deed shall constitute the relationship between the parties as a partnership or joint venture.

4. Relationship Managers and Requested Relationship Meetings

4.1 Each party will at all times during the term of this Deed ensure it has appointed a suitably qualified person as its Relationship Manager. Each party shall notify the others of its initial Relationship Manager within 10 Business Days of the date of this Deed. The Council may at any time notify the University that the Trust's Relationship Manager shall be regarded as the Council's Relationship manager for the purposes of this clause. The Relationship Manager for each party will be responsible for:

- a. overseeing that such party is following the relationship principles set out in clause 3;
- b. meeting with the Relationship Manager for the other parties to discuss the relationship between them, and whether any relationship issues have arisen;
- c. working together to identify the reasons for any relationship issues and using best endeavours to define and agree any improvements a party can make to follow those relationship principles;
- d. oversight and implementation of any such agreed improvements.

4.2 The parties acknowledge that regular meetings of their Relationship Managers (held in person or by telephone) are likely to help develop and maintain the collaborative relationship contemplated by this Deed. Therefore, throughout the term of this Deed, any party may give written notice to the other requesting a meeting to discuss matters regarding the Deed, including:

- a. how well the contractual relationship is functioning;
- b. whether there are aspects of the functioning of the relationship that any party could improve;
- c. how such improvement might be implemented;
- d. the overall progress of the Development Obligations contemplated by this Deed.

4.3 Each party shall make its Relationship Manager available for such a meeting. The parties shall liaise to determine a suitable time for the meeting, which must be as soon as is reasonably practicable after a notice is given.



4.4 If any dispute between the Relationship Managers arises and it cannot be resolved within a reasonable time by the Relationship Managers, either Relationship Manager may serve a notice of dispute under clause 22.1 in order to invoke the dispute resolution procedure in clause 22.

4.5 Acknowledging the importance of the Relationship Manager role to the overall relationship between the parties, each party shall consult with the others if there is any proposed change to the first party's Relationship Manager.

5. **Project Structures**

5.1 The project structures to be adopted by the parties are as follows:

- a. The appointed Relationship Managers for each party will attend their respective monthly meetings with contractors and consultants and receive reports on progress and key issues from them;
- b. Acknowledging the requirement for the Relationship Managers to meet regularly in accordance with clause 4.2, the Relationship Managers will attend the monthly Project Delivery Team Meetings as the co-ordinating governance body for the overall development. The Relationship Managers will report on the respective developments and any co-ordination issues;
- c. The Relationship Managers shall facilitate co-ordination between the parties

6. **Cross-Representation for Mutual Benefit**

6.1 The parties acknowledge that neither the University nor the Trust is obliged by this Deed to appoint a particular project manager or contractor for its Development.

6.2 Notwithstanding clause 6.1, the parties acknowledge that it would be preferable to use the same project manager and contractor for the Development of both the University Building Space and the Stadium, provided that each party can agree appropriate commercial terms and appointment contracts with such consultants and contractors.

6.3 The parties agree to work together in negotiations with any such consultants and share information on their respective Developments to the extent reasonably practicable in order to work to their aim of cross representation on each party's respective Development.

7. **Co-ordination and Completion of the Overall Development**

7.1 The Trust shall be solely responsible for the design and construction of the Stadium and the Car Park.

7.2 The Trust shall be responsible for the design, construction and landscaping of the Plaza, provided that the Trust shall obtain the University's agreement to all design aspects of the Plaza, such agreement not to be unreasonably withheld.

7.3 The University shall be solely responsible for the design and construction of the University Building Space.

7.4 The parties acknowledge that given the proximity of the University Building Space to the Stadium, a coordinated development approach is required for both Developments.



- 7.5 The parties shall consult one another in respect of their respective Developments of the University Building Space and the Stadium to ensure a coordinated development approach is taken.
- 7.6 The University shall ensure that the timing of construction of the University Building Space is coordinated with the Development of the Stadium (and in particular the west stand of the Stadium).
- 7.7 Conditional on satisfaction of the conditions in clause 15, the Council, via its agent the Trust, undertakes to the University to complete the Stadium Development and the construction of the Plaza.
- 7.8 Conditional on satisfaction of the conditions in clause 15, the University undertakes to the Council and the Trust to complete the University Building Space Development.

8. Encumbrances

- 8.1 The Parties acknowledge that subject to clause 8.2 the Council may grant, create and/or register any easements, consent notices, covenants or any other encumbrances, rights or obligations (together "**Covenants**") that:
- a. may be required by the Council in order to deposit the survey plan to create separate computer freehold registers for the University Land, the Plaza and the Stadium;
 - b. result from or are anticipated by the terms of this Deed;
 - c. are created in respect of services and/or utilities for the Development;
- 8.2 The Council and/or the Trust on its behalf shall consult with the University regarding the form of all such Covenants in accordance with clause 3 before the Council determines the final form of the Covenants. Except with the agreement of the University (which shall not be unreasonably withheld) no easement shall be created in favour of the Stadium over the University Land if the creation of that easement may affect the design of the University Building Space.
- 8.3 The University shall take title to the University Building Space, and its interest as tenant in common (with the Council) in the title to the Plaza, subject to the Covenants referred to in this Deed and shall not be entitled to requisition such title in respect of such Covenants.

9. Easements and Access

- 9.1 The parties agree that each party shall be afforded unhindered access to its land within the Development following completion of construction.
- 9.2 As part of the subdivision of the Site, the Trust shall ensure that easements are granted in favour of:
- a. the University Building Space over the Plaza and any other relevant parts of the Development to ensure free and unhindered access to the University Building Space at all times;
 - b. the land comprising the Stadium over the Plaza to ensure free and unhindered access to the Stadium at all times.



10. University Funding Contribution

10.1 The University shall pay in respect of each of the categories of work identified in Schedule 1 the specified amount or the specified share of the actual costs (as the case may be) of those items of work.

10.2 If necessary in order to determine whether a specific item of cost is included within Schedule 1, and if so into which category it may come:

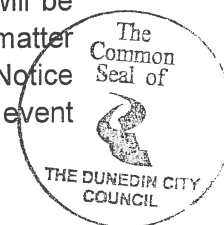
- a. the parties shall involve and consult with their respective quantity surveying consultants;
- b. the parties shall use their best endeavours to agree on a final categorisation basis;
- c. either party may at any time refer the matter to mediation in accordance with clause 22.3 and failing resolution by mediation to Arbitration in accordance with clause 22.4 .

10.3 In relation to contractors engaged by the Trust where costs are to be shared between the University and the Council pursuant to this Deed, then:

- a. the Council shall have responsibility for payment of those costs to the relevant service providers;
- b. the Council shall ensure that the University has the opportunity to raise disputes as to the liability for payment as between the contractor and the parties to this agreement and the Council shall pursue such disputes as reasonably required by the University and as between the parties hereto the University shall not (except as may be determined by arbitration under clause 22) be bound by any decision by the Council to make a payment to which the University has not agreed;
- c. the University shall contribute its share by making payment to the Council in a timely manner when invoiced by the Council, without prejudice to the final agreement or determination of the proportion of those costs to be borne by each party and otherwise without withholding, set off or deduction but subject to clause 10.5.

10.4 Within 30 days after the parties' respective liability to contribute to any component of the costs to be shared has been agreed or determined the party liable to pay shall pay the amount of the difference for that component of the shared costs without withholding, set off or deduction.

10.5 Each invoice from the Council to the University for the University's contribution shall be supported by such documentation as the University may reasonably require in order to verify the appropriateness of the amount on-charged (such as a costs spreadsheet or copy of supplier invoices). If the University wishes to dispute any item or charge on an invoice rendered by the Council to the University (whether that dispute relates to the amount charged by a contractor or to the assessment of the University's liability as between the parties hereto), the University shall give written notice to the Council within 20 business days of receiving the invoice of the specific amount(s) and reason(s) for disputing that item or charge. Any such notice will be deemed to be a Notice of Dispute for the purposes of clause 22. If the subject matter of a Notice of Dispute relates to construction works, the party submitting the Notice shall submit with it, or shall provide as soon as possible thereafter (and in any event



before any processes under clause 22 are pursued) confirmation that the matter has first been submitted to the parties' respective quantity surveyors for attempted resolution and a summary of the position of each of those quantity surveyors. If the dispute has not been resolved by discussion under clause 22.2 by the due date for payment, the University shall pay the disputed amount to a stakeholder agreed to by the parties pending resolution of the matter through the dispute resolution procedure.

- 10.6 In the event that the University agrees to fund, in the first instance, any costs of an item of work covered by Schedule 1 to an extent greater than its ultimate liability to contribute to that item as established by the Schedule, the Council shall be liable to pay to the University the excess amount over its proper share and the provisions of clauses 10.2 to 10.5 shall apply mutatis mutandis.

11. **Publicity**

- 11.1 The parties acknowledge that it is important that publicity and public statements about this Deed and the Development are handled sensitively and that each party co-ordinates public statements about the Development with the other parties to the extent it is permitted to do so at law. Nothing in this clause 11 shall limit or restrict a party's obligations at law.
- 11.2 No party may directly or indirectly criticise another publicly regarding the operation of this Deed, without first fully discussing the matters of concern with the other in a co-operative and constructive manner.
- 11.3 To the extent that any party intends to make a public statement or press release concerning the Development:
- a. that party shall notify the other parties of the proposed content and timing of any such proposed public announcement or press release and shall seek the other parties' comments on both the content and timing of such announcement or press release;
 - b. the other parties shall provide their comments as soon as is reasonably practicable (and in any event within 3 Business Days), including clear and detailed specifics of any proposed content to which a party objects, the reasons for its objection and that party's requested amendments to the proposed content;
 - c. each party shall appoint representatives to consult with the other parties in co-ordinating disclosures and publicity about the Development (whether required by law or otherwise) or this Deed. That representative will be the Relationship Manager unless an alternative representative is named;
 - d. each party shall give prompt and due consideration to any comments received from either of the other parties, and make such changes as it considers appropriate, before making its announcement or press release..
- 11.4 Nothing in this clause limits clause 20 (Confidentiality).

12. **Car Parking Spaces**

- 12.1 The Trust shall construct the Car Park comprising approximately 300 Car Parking Spaces.
- 12.2 The Trust shall be solely responsible for the design of the Car Park, and for obtaining all consents necessary to construct the Car Park.



12.3 Once the Car Park has been completed and is available for use, the University shall take a lease of 150 individual Car Parking Spaces within the Car Park.

12.4 The lease shall contain the principal commercial terms set out in Schedule 2 and such other terms as are customarily used by the Council for Council-owned leased car parks, provided that no terms (from Schedule 2 or otherwise) shall be included which prevent the agreement between the parties operating as a lease.

13. **Plaza Management Body**

13.1 The parties agree to establish a Plaza Management Body prior to the completion of the Development to coordinate all activities on the Plaza following completion of the Development.

13.2 The Plaza Management Body will comprise:

- a. Two representatives jointly of DVML and the Council;
- b. Two representatives of the University,

and will not be a separate legal entity unless all parties agree that separate legal personality is legally necessary or desirable

13.3 The primary functions of the Plaza Management Body will be:

- a. event and activities coordination;
- b. repairs and maintenance of the Plaza;
- c. management of advertising and sponsorship relating to the Plaza;
- d. insurance and risk management.

13.4 The parties shall use their best endeavours to agree on administrative matters relating to the Plaza Management Body, including the frequency of meetings, specific requirements for decision-making, quorums for meetings and all other matters relating to the administration of the Plaza Management Body, with any dispute to be resolved under clause 22.

14. **Term**

14.1 The Deed shall commence on the date it has been signed by all parties and shall continue until either:

- a. in relation to the Development Obligations, the conditions in clause 15 are not satisfied within a reasonable time and a party then terminates the Development Obligations under clause 16; or
- b. this Deed is terminated in accordance with its provisions or otherwise by law.

15. **Conditions**

15.1 The Development Obligations of the Parties are conditional, by way of condition subsequent, on:

- a. A commitment in writing from the Council in terms acceptable to the University as to the realignment of State Highway 88;



- b. The Trust obtaining resource consent for subdivision of the University Building Space and Plaza into separate computer freehold registers on terms and conditions satisfactory to both parties (each acting reasonably);
- c. The Trust and/or the Council securing for the University a guarantee (on terms acceptable to the University) of access to the Site during the period of, and for the purposes of, the University's construction of the University Building Space.

15.2 In accordance with the key objectives in clause 2 and the relationship principles in clause 3, the Parties shall promptly take all reasonable and practicable steps that are necessary or desirable to achieve satisfaction of the conditions.

16. Termination for Non-Satisfaction of Conditions

16.1 If one or more of the conditions has not been satisfied by the date six months after the date of this Deed:

- a. the University may at any time give the other notice requiring all the conditions to be satisfied within a period of not less than two months from the date that notice is given; and
- b. if one or more of the conditions has still not been satisfied by the date specified in the notice given under clause 16.1a, the University may give notice of intention to terminate the Development Obligations under this Deed not less than 30 days from the date that notice is given.

16.2 If one or more of the conditions have still not been satisfied by the date specified in the notice given under clause 16.1b the University may then give further notice terminating the Development Obligations under this Deed.

17. Compensation Provisions

17.1 Compensation shall be payable by one party to the other in the circumstances specified in, and pursuant to the provisions of, Schedule 3.

18. Termination of Development Obligations

18.1 Either party may give written notice to the other terminating the Development Obligations under this Deed (except the obligations in clauses 20 and 22) as at such date as may be specified in the notice if:

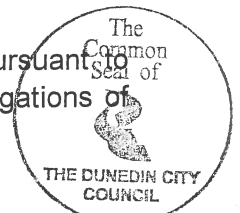
- a. that party has first given the other party not less than 20 Business Days notice specifying a material breach of the Development Obligations of the other party under this Deed and requiring such breach to be remedied; and
- b. the other party has failed to remedy the specified material breach within the period specified in the notice,

and not otherwise.

18.2 Termination of the Development Obligations shall not prejudice any rights which may have accrued to either party prior to the date of termination and shall not affect the other obligations of the parties under this Deed.

19. Role and Liability of the Trust

19.1 The Trust enters into this Deed as a special agent of the Council pursuant to authority conferred under a Service Level Deed between them. The obligations of



the Trust under this Deed are the obligations of the Council as principal and the rights and powers of the Trust under this Deed are exercised by the Trust as duly authorised agent of the Council as principal. If the Trust's appointment as agent of the Council expires or is terminated, any reference to the Trust shall be a reference to the Council.

- 19.2 Without in any way limiting the liability of the Council as principal, the Trust shall have liability to the University in relation to this Deed only if and to the extent that the Trust, in purporting to exercise a right or power under this Deed (including acting or omitting to act in relation to this Deed), does so outside the scope of the authority conferred on it as special agent of the Council. Any other liability of the Trust to the University, regardless of the cause of action, is hereby excluded.

20. Confidentiality

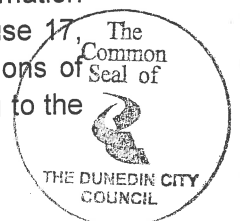
Non-Disclosure

- 20.1 Subject to applicable law, the parties shall not divulge to any person whatsoever any of the trade secrets, secret or confidential information, processes or dealings or any information concerning the organisation, business, finance, transactions or affairs of any party or relating to the Development except to such architects, engineers, lawyers, accountants or other professionals as required by either party to perform its obligations pursuant to the Deed and then only on the basis that such professionals are similarly bound by obligations of confidentiality no less onerous than those contained in this clause. This clause survives termination of the Development Obligations under clause 18.

Consent for Permitted Disclosure

- 20.2 The parties acknowledge that various statutory or regulatory requirements may require the disclosure of some or all of the terms of this Deed or information relating to this Deed. Notwithstanding this acknowledgement, if a party receives any request for information relating to this Deed including any request made by a third party under the Official Information Act 1982:

- a. the request for disclosure shall be deemed to affect the other parties to this Deed;
- b. the party receiving the request shall immediately confer with the other parties prior to any disclosure of information pursuant to that request, in relation to the nature of the information the disclosure of which has been requested, the potential application of any contractual or statutory grounds or reasons not to disclose any or all of that information, and the manner in which any resulting information disclosure is to be expressed;
- c. if the information requested in the disclosure request should properly and reasonably be regarded as information belonging to, or confidential to, or relating to the commercial interests of, another party (including any third party), the party receiving the request shall refer the request to that other party;
- d. without limiting the previous paragraphs, any request relating to information pertaining to satisfaction of clause 16.1(b) or 16.1(g), clause 10, clause 17, any dispute resolution process under clause 22 or any of the provisions of any schedule to this Deed shall be deemed to be or treated as relating to the



commercial interests of the other parties unless agreed or determined otherwise pursuant to the applicable regulatory process.

21. Assignment

- 21.1 Subject to this clause, no party may assign its interest in this Deed without the consent, in the case of the University, of the Council and in the case of the Trust or the Council, the University.
- 21.2 The parties acknowledge that the Council's interest in the Stadium, the Car Park, the Plaza or any part of the Site may be transferred in due course to a Council-owned or Council-controlled entity. In such event, the Council may assign or transfer its interest under this Deed, so far as it relates to that part of the Site the ownership of which is to be transferred, by way of deed of assignment, novation or accession (as the case may require). On completion of the assignment or transfer of the Council's interest, the Council and the Trust as its agent shall cease to have any liability to the University under this Deed (so far as such liability relates to that part of the Site the ownership of which is to be transferred) and the liability of the assignee or transferee under this Deed shall not be limited by section 11(2) of the Contractual Remedies Act 1979.
- 21.3 The parties acknowledge that the University's interest in the University Land and the Plaza or any part thereof may be transferred in due course to an entity owned (in full or in part) by the University or controlled by it. In such event, the University may assign or transfer its interest under this Deed, so far as it relates to that part of the Site the ownership of which is to be transferred, by way of deed of assignment, novation or accession (as the case may require). On completion of the assignment or transfer of the University's interest, the University shall cease to have any liability to the Council or the Trust under this Deed (so far as such liability relates to that part of the Site the ownership of which is to be transferred) and the liability of the assignee or transferee under this Deed shall not be limited by section 11(2) of the Contractual Remedies Act 1979.

22. Resolution of Disputes

Notice of Dispute

- 22.1 If any dispute or difference arises between the parties either during or after the completion of the Development or after the termination of this Deed as to the construction of this Deed or as to any other matter arising under this Deed, then either party may give to the other notice in writing setting out the particulars of the dispute ("**Notice of Dispute**"). The giving of a Notice of Dispute shall be a condition precedent to the commencement by either party of arbitration proceedings with regard to the matters in dispute.

Private Negotiation

- 22.2 Within 10 Business Days of the service of a Notice of Dispute, senior executives of the parties shall confer at least once and use their best endeavours to resolve the dispute or to explore other methods of resolving the dispute. At each such conference, each party shall be represented by a person having authority to resolve the issues in dispute.



Mediation

- 22.3 Provided always that a dispute has first been referred to senior executives of the parties in accordance with clause 22.2, either party may request that the dispute be referred to mediation. The parties shall consider any such request in good faith, but shall not be bound to agree to a referral to mediation. Within 10 days of any such agreement, the dispute shall be referred to mediation in accordance with such procedures as the parties shall agree or, failing agreement within 20 days of the reference to mediation, in accordance with the then current Mediation Protocol published by the Arbitrators and Mediators Institute of New Zealand Incorporated. The mediator shall be appointed by agreement between the University and the Council or, failing agreement within 20 days of reference to mediation, by the President for the time being of the Arbitrators' and Mediators' Institute of New Zealand Incorporated.

Arbitration Notice

- 22.4 If after referral to senior executives in accordance with clause 22.2 and then to mediation in accordance with clause 22.3 the dispute is not resolved, either party may take any action necessary to have the dispute determined by arbitration by such person as is agreed between the parties or, if the parties cannot agree within 10 Business Days, either party may make application to the President for the time being of the Arbitrators and Mediators Institute of New Zealand Incorporated to appoint an arbitrator. The provisions of the Arbitration Act 1996 shall apply to such arbitration.

Other issues to be Arbitrated

- 22.5 If at any time prior to the conclusion of any arbitration hearing referred to in clause 22.4 either party serves upon the other a Notice of Dispute concerning issues other than the issue being considered in the current arbitration hearing, then at the request of either party but subject always to the approval of the appointed arbitrator hearing the arbitration that other issue shall be referred for determination in the same proceedings.
- 22.6 This clause shall not apply to an application by either party seeking urgent interlocutory relief from any court.
- 22.7 Pending resolution of any dispute, the parties shall continue to perform their obligations under this Deed in all respects including performance of the matter which is the subject of dispute.

23. Notices**General**

- 23.1 A notice, demand, certification or other communication under this Deed shall be in writing and may be given by an agent or solicitor of the sender.

Method of Service

- 23.2 In addition to any means authorised by law, a communication may be given by:
- a. being personally served on a party;
 - b. being left at the party's current address for service;
 - c. being sent to the party's current address for service by prepaid ordinary mail
- or



- d. by being sent by facsimile to the party's current facsimile number for service;
- e. If a party gives notice authorising delivery of communications by electronic mail and designating an email address for that purpose, then until such time as that party gives further notice countermanding that authorisation or changing the designated email address, by electronic mail to the designated e-mail address.

Address for Service

- 23.3 The addresses for service are initially those specified on page 1 of this agreement. A party may from time to time change its address for service by written notice to the other party.

Service

- 23.4 A communication given by post shall be deemed received on the second Business Day after posting.

Service after Hours

- 23.5 If a communication to a party is received by it:

- a. after 5:00pm; or
- b. on a day which is not a Business Day,

it will be deemed to have been received at the commencement of the next Business Day.

24. Miscellaneous

Legal Costs

- 24.1 Each party shall pay its own costs of preparing and executing this Deed.

Waiver and Exercise of Rights

- 24.2 A single or partial exercise or waiver of a right relating to this Deed shall not prevent any other exercise of that right or the exercise of any other right. A party shall not be liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

Further Assurance

- 24.3 Each party shall promptly execute all documents and do all things that any other party from time to time reasonably requires of it to effect, perfect or complete the provisions of this Deed and any transaction contemplated by it (including any assignment or transfer by the Council under clause 21).

Severance

- 24.4 Any provision of this Deed that is held by a court or tribunal to be illegal and unenforceable shall be severable from the other provisions of this Deed and no severance of a provision shall affect the validity of any of the other provisions of this Deed.



Entire Understanding

- 24.5 This Deed embodies the entire understanding and agreement between the parties as to the subject matter of this Deed and:
- a. All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Deed, including the Heads of Agreement, are merged in and superseded by this Deed and shall be of no force or effect and no party shall be liable to any other party in respect of those matters.
 - b. No oral explanation or information provided by any party to another shall:
 - i. affect the meaning or interpretation of this Deed; or
 - ii. constitute any collateral agreement, warranty or understanding between any of the parties.

Counterparts

- 24.6 This Deed may be executed in counterparts, all of which together shall constitute the one document.

25. Limitation of Trustee Liability

- 25.1 Subject to the provisions of clause 25.3, the Trustees of the Trust ("the Trustees") enter into and execute this Deed and covenant whether expressly or impliedly as trustees of the Trust solely but no further and not in their personal capacity or otherwise and with the intent to bind only the person or persons for the time being filling the office of trustee during their holding such office and not thereafter.
- 25.2 Subject to the provisions of clause 25.3, the liabilities and obligations of the Trustees hereunder (if any) whether for payment of any sum or performance or observance of any covenant or provision herein contained or implied shall at all times and for all purposes be counted not as an unlimited personal liability or obligation but only as a liability or obligation to pay any moneys and/or perform and observe any covenant and provision out of and so far as will extend to the assets of the Trust and coming into the hands of the Trustees in the course of their administration of the Trust.
- 25.3 Where the Council incurs any loss as a result of breach of trust by any Trustee due to Misfeasance on the part of that Trustee, this limitation of liability will not apply to that Trustee and that Trustee will be personally liable to the Council to the extent the Trust assets do not satisfy all that Trustee's obligations to the Council.
- 25.4 Subject to clause 25.3, any suits or proceedings in respect of this Deed shall be instituted against the Trust and any judgment, order or decree shall be limited to such body and execution thereon shall at all times and for all purposes be limited to the assets of the Trust in the ordinary course of its administration.
26. **No Partnership or Agency**
- 26.1 Nothing in this Agreement shall create, or constitute or be deemed to create or constitute a partnership between the Parties or any of them nor to constitute or create or be deemed to create or constitute a Party as an agent of any other Party for any purpose whatsoever. Except as expressly provided for herein no Party shall have any authority or power whatsoever to bind or commit, act or represent or hold itself out as having authority to act as an agent of, or in any way bind or commit the

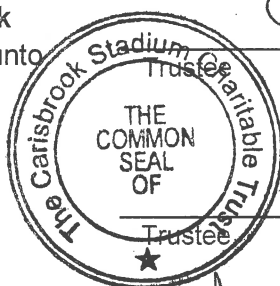


other Party or Parties to any obligations. The rights, duties, obligations and liabilities of the Parties shall be several and not joint or collective.

This Deed was executed:

The Common Seal of **The Carisbrook Stadium Charitable Trust** was hereunto affixed in the presence of:

Date:



The Common Seal of **Dunedin Venues Management Limited** was hereunto affixed in the presence of:

Date: 10 January 2011



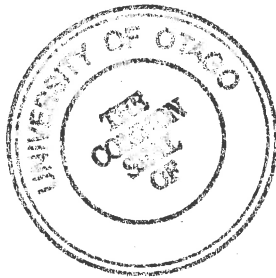
Director

Chief Executive Officer



The Common Seal of **The University of Otago** was hereunto affixed in the presence of:

Date: 13 July 2010



[Signature]

Council Member

[Signature]

Council Member

The Common Seal of **The Dunedin City Council** was hereunto affixed in the presence of:

Date: 24 December 2010



[Signature]

Mayor

[Signature]

Authorised Signatory

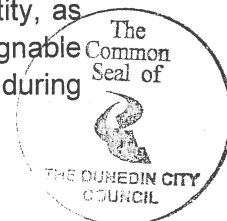
Schedule 1 – Cost Sharing Mechanism

General description of cost item	Amount or proportion payable by University
Masterplanning design fees and costs applicable to the plaza incurred up to the date of this Deed and paid by the Trust	To be agreed
Demolition costs in respect of the overall Development;	Land Area Proportion
The costs of the design and construction of the Plaza (Infrastructure Works, construction, fees and any other associated costs);	50%
Site-wide Infrastructure Works costs such as remediation works, earthworks, services for utility supplies (including temporary works, connection and disconnection costs), drainage and flood hazard mitigation works;	Land Area Proportion
Construction of the shared wall and associated elements between the west stand of the Stadium and the University Building Space that are no higher than the University Building Space and of which the University Building Space gains the benefit;	50%
Professional Services fees and charges associated with the costs of the District Plan change and resource consents;	To be agreed
For the avoidance of doubt, and where applicable, the costs above are to include associated Professional Services fees, statutory fees and levies. Any DCC fees or levies shall be calculated on a strictly arms' length basis and shall be susceptible to review through the mediation and arbitration provisions hereof.	



Schedule 2 – Car Parking Spaces Lease Terms

1. The terms of the lease to be offered under clause 12 of this Deed shall include the following principal commercial terms:
 - a. the lease will be for a term of five years and include three rights of renewal each of five years;
 - b. if the University so requires, and if the lease is registerable the lease shall be registered against the certificates of title for the Car Park;
 - c. rent will be payable by the University at a rate to be agreed by the parties prior to completion of construction of the Stadium and Car Park or in the absence of agreement at the current market value for parking in the area (ignoring the University's ownership or occupancy of the University Building Space) with that value to be assessed by an independent registered valuer appointed by Council and the University, if they can agree on a single valuer, and otherwise by valuers appointed by both parties (or by their umpire if necessary);
 - d. the rent will be reviewed as at the date of the first renewal of the lease and thereafter every 2 years from the date of commencement of the first renewal of the lease. The reviewed rent shall be as agreed or as fixed in accordance with the clause 1c;
 - e. the University will have exclusive possession of the Car Parking Spaces from 7.30am to 7.30pm on each day of the year except Saturdays, Sundays and statutory public holidays.
 - f. If maximum parking capacity is required for a sporting or other event being held at the Stadium on a day and during hours in which the University has exclusive possession of the Car Parking Spaces the University will grant to Dunedin Venues Management Limited ("DVML") a licence to occupy the Car Parking Spaces for the period of time stipulated in a written notice of intended use to be given to the University by DVML not less than 72 hours prior to the event.
 - g. DVML shall pay to the University a licence fee for the period during which DVML exercises the licence referred to in clause 1f. The licence fee shall be at a daily rate equivalent to one day's rental under the lease and shall be payable at such daily rate regardless of the number of hours during which the licence is exercised on that day.
2. The University shall ensure that any car park licence arrangement, employment agreement or other document or arrangement under which the University grants to any person the right to use any licensed Car Parking Space contains a provision which precludes that person from using the licensed Car Parking Space on any day on which DVML exercises the licence referred to in clause 1f and otherwise shall do all things reasonably required to ensure there is no impediment to use of the Car Parking Spaces by DVML on such day.
3. All references in this Schedule to "the Council" shall mean or include the Council itself, or the Trust or any lessee of the Stadium or any Stadium operating entity, as the case may require, and the Council's interest in the lease shall be assignable accordingly without requiring the University's consent provided however that during



such time as the licence referred to in clause 1f remains in force the Council shall not assign its interest in the lease to DVML.



Schedule 3 – Compensation

1. Compensation Payable by the Council to the University

- 1.1 The Council shall be liable to pay to the University compensation calculated in accordance with the provisions of this Schedule if the University gives notice of termination under clause 16.2 or if the following conditions are satisfied:
- a. All of the conditions as set out in clause 15 of this Deed have been satisfied; and
 - b. Subject to clause 1.2, the Council subsequently resolves formally to abandon or suspend the Stadium Development before the Stadium Development is completed.
- 1.2 The Council shall have the right to suspend its Stadium Development Project on one occasion of up to two years without the University's becoming entitled to compensation hereunder
- 1.3 At any time within one year after the conditions set out in clause 1.1 have been satisfied subject to clause 1.2, the University may give notice to the Council ("**the Put Notice**") requiring the Council to purchase all of the University's right, title and interest in the University Building Space Development project (including its interest in the Plaza) for the Price calculated in accordance with this Schedule.
- 1.4 The Price means and includes an amount equal to the sum of the following components:
- a. An amount equal to the amount of the funding contribution actually paid by the University (whether interim or final) pursuant to clause 10 of this Deed.
 - b. An amount equal to the actual, external consultancy and construction costs incurred by the University in respect of the University Building Space (being the actual costs, fees and disbursements paid by the University to the University's external project manager, architect, design, structural engineering, quantity surveying and similar consultants and its contractors) up to the date of service of the Put Notice;
 - c. If the University has completed the purchase of the University Land and its interest in the Plaza in accordance with the Land Purchase Agreement, the amount paid thereunder.
 - d. If the University has not completed the purchase of the University Land and its interest in the Plaza in accordance with the Land Purchase Agreement, the amount advanced by the University to the Council as recorded in clause 1(b) of the Further Terms of Sale of that agreement.
- 1.5 The University's interest in the University Building Space Development (including its interest in the Plaza) shall include, and the University shall assign absolutely to the Council on settlement:
- a. copyright and/or an exclusive, unfettered, royalty-free licence to use all plans, designs, specifications, models, projections, quantity surveys, programmes, schedules, cost estimates, financial analyses and all other information and documentation of and incidental to the University Building Space Development;



- b. the University's interest in all contracts entered into in relation to the University Building Space Development, including such contracts with architects, design consultants, structural engineering consultants, quantity surveyors, project managers, construction contractors, marketing consultants, lawyers, accountants and other advisors;
- c. the University's interest in any uncompleted requests for proposals or tender processes relating to the University Building Space Development;
- d. the University's interest in any insurance policies (whether as insured party or interested party) relating to the University Building Space Development;

all other contracts, arrangements and understandings that would reasonably be considered to be relevant to the Council in acquiring the full, unencumbered and unfettered benefit of the University Building Space Development.

- 1.6 The Council's obligation to pay the Price shall be conditional on the Council being satisfied, on reasonable grounds, that on settlement it will acquire the full, unencumbered and unfettered benefit of the uncompleted University Building Space Development as contemplated in the previous clause.
- 1.7 Settlement of the Council's acquisition of the University's interest in the University Building Space Development (including its interest in the Plaza) pursuant to a Put Notice and in accordance with the provisions of this Schedule shall constitute full and final settlement of all claims the University may have arising in any way and on whatever ground directly or indirectly from the passing of a Council resolution to abandon the Stadium Development.
- 1.8 Notwithstanding the Council taking an absolute assignment from the University of the University's interest in the contracts, policies, arrangements, understandings and other things in action as contemplated in clause 1.5, the Council shall retain any right of action it may have at law against the University for contribution or indemnity arising from any pre-assignment act or omission of the University that is actionable by any other party to any such contract, policy arrangement, understanding or other thing in action.
- 1.9 At any time within one year after the conditions set out in clause 1.1 have been satisfied subject to clause 1.2, the University may, as an alternative to giving the Put Notice under clause 1.3 give notice to the Council ("**the Compensation Notice**") requiring the Council:
 - (a) to execute and deliver to the University or its nominee a memorandum of transfer of the Council's interest in the Plaza for a purchase price \$1 plus GST
 - (b) to refund to the University an amount equal to the amount of the funding contribution actually paid by the University (whether interim or final) pursuant to clause 10 of this Deed.

2. Compensation Payable by University to the Council



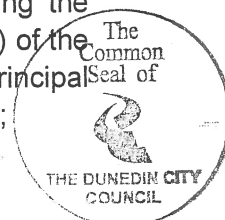
- 2.1 The University shall be liable to pay to the Council compensation calculated in accordance with the provisions of this Schedule if the following conditions are satisfied:
- a. All of the conditions as set out in clause 15 of this Deed have been satisfied; and
 - b. The University subsequently resolves formally to abandon the University Link Building before the University Link Building is completed.
- 2.2 A University Council resolution to suspend ongoing work on the University Link Building for a specified period not exceeding two years shall not constitute a resolution to abandon the University Link Building, for the purposes of this Schedule.
- 2.3 At any time within one year after the conditions set out in clause 2.1 have been satisfied, the Council may give notice to the University ("**the Compensation Notice**") requiring the University to pay compensation calculated in accordance with this clause.
- 2.4 The compensation payable by the University ("**Compensation**") means and includes:
- a. Execution by the University and delivery to the Council of a memorandum of transfer of the University Land and the University's interest in the Plaza to the Council or the Council's nominee for a purchase price \$1 plus GST; and
 - b. The amount or cumulative amounts of the University funding contributions payable by the University pursuant to clause 10 and Schedule 1 of this Deed that have not already been paid by the University and, for the purposes of this provision, the fact that the University has resolved to abandon the University Link Building shall be ignored in calculating share of the costs specified in those provisions that is to be paid by the University.
- 2.5 Payment of the Compensation payable in accordance with the provisions of this clause shall constitute full and final settlement of all claims the Council may have arising in any way and on whatever ground directly or indirectly from the passing of a University Council resolution to abandon the University Link Building.

3. **Dispute Resolution**

- 3.1 Any dispute between the parties regarding any aspect of the application of provisions of this Schedule shall be resolved in accordance with the dispute resolution procedures set out in clause 22 of this Deed.

4. **Compensation principles**

- 4.1 The parties acknowledge that the provisions of this Schedule take into account the following matters:
- a. The University Building Space Development and the Stadium Development are intended to complement each other;
 - b. Statutory, regulatory and governance consents and approvals, and funding from public and private sources, for both principal components (being the Stadium Development and the University Building Space Development) of the overall Development have been sought on the premise that both principal components of the overall Development will proceed and be completed;



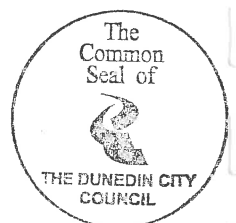
- c. The parties nevertheless acknowledge that the successful completion of both principal components of the overall Development is subject to numerous circumstances either outside or not entirely within any party's control including the possibility of statutory or regulatory intervention by governmental or other agencies, the reversal or modification by any party's governing body of previous decisions or resolutions made by that party's governing body, risks of legal challenges by third parties to the progress or completion of either principal component of the overall Development, the withdrawal of funding by, or other failure of, any entity providing any part of the funding for either principal component of the overall Development, and the insolvency or other default of any service provider involved in the relevant construction process;
- d. This Deed intentionally contains no provisions excusing a party's liability for failure to perform an obligation under this Deed owing to the occurrence of events beyond its reasonable control;
- e. All such risks are hypothetical but real and the potential liabilities as between the parties that might flow from the occurrence of any such circumstance are extraordinarily difficult if not impossible to predict;
- h. All parties nevertheless acknowledge that:
 - i. The utility and value of one principal component of the overall Development without the other will be diminished, in comparison with successful completion of both principal components of the overall Development; and
 - ii. The abandonment of one of the principal components of the overall Development will result in significant wasted expenditure by the other parties (regardless of what decisions those parties may subsequently make regarding a revised Development);
 - iii. Both the University and the Council require a substantial degree of certainty regarding the financial implications of an unexpected, future abandonment of either principal component of the overall Development before committing themselves to proceed (by confirming satisfaction of the conditions set out in clause 15 of this Deed).

4.2 Accordingly, all parties acknowledge that:

- a. The provisions of this Schedule represent mechanisms for providing each of them (respectively) with fair and adequate compensation for the loss of utility and value of one of the principal components of the overall Development resulting from the unilateral abandonment of the other principal component of the Overall Development, for whatever reason, by the party that has undertaken under clause 7 of this Deed to complete that principal component of the overall Development; and
- b. The Price payable by the Council to the University pursuant to clause 1 represents a genuine pre-estimate by the University of the loss it is reasonably likely to suffer resulting from the unilateral abandonment by the Council, for whatever reason, of the Stadium Development project and the construction of the Plaza and accordingly the breach by the Council of its undertaking in clause 7 of this Deed;



- c. The Compensation to be paid or satisfied in accordance with clause 2 represents a genuine pre-estimate by the Council of the loss that the Council and the Trust are reasonably likely to suffer resulting from the unilateral abandonment by the University, for whatever reason, of the University Building Space Development project and accordingly the breach by the University of its undertaking in clause 7 of this Deed.



ANNEXURE 1.

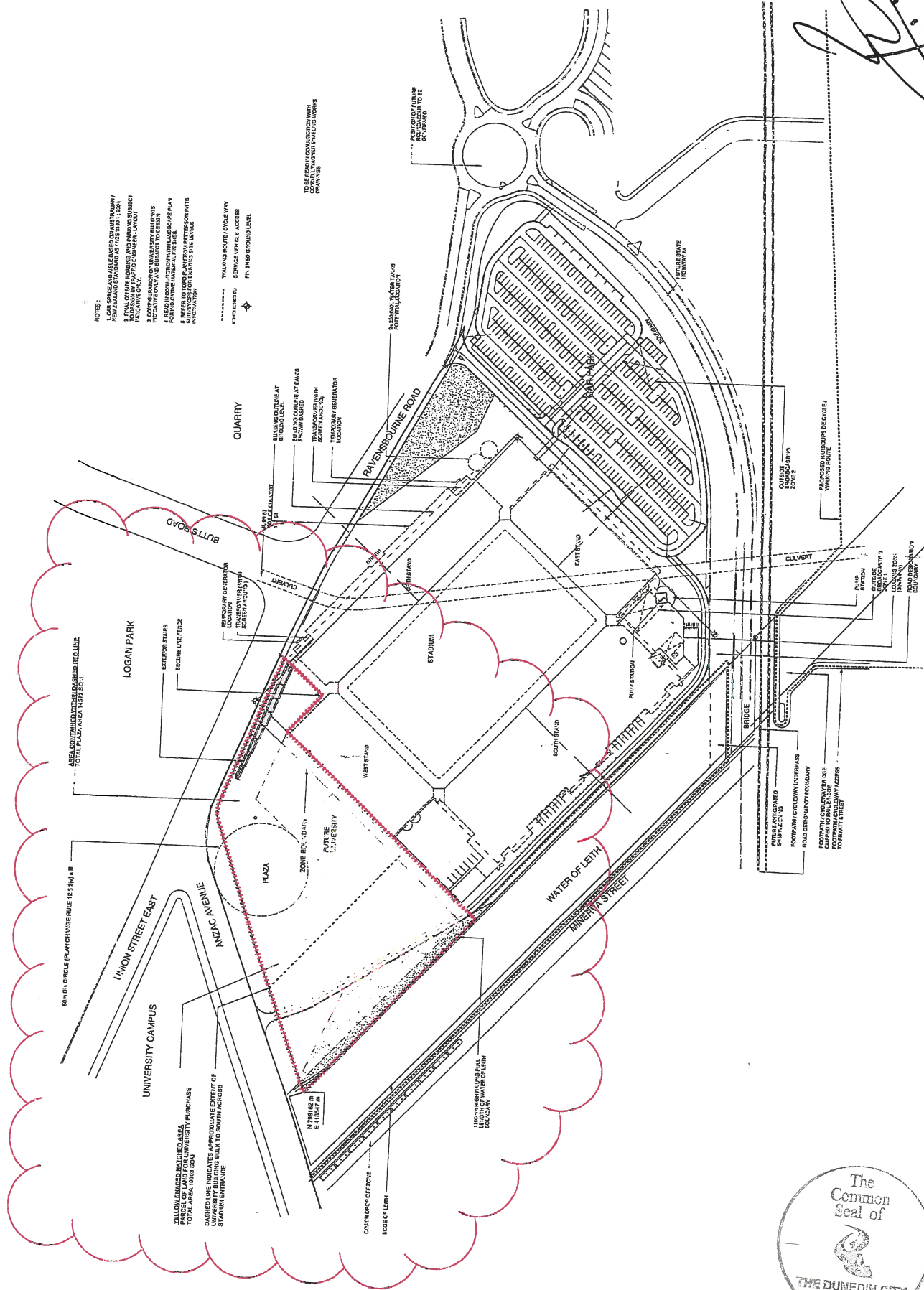
REVISIONS

NOTES

1. LAND SPACES AVAILABLE UNDER AN INTERIM/NEW ZEALAND STANDING AS FOR THE 1:1000 INDICATIVE ONLY.
2. CONTRIBUTION OF UNIVERSITY BUILDINGS TO THE STADIUM PLAZA AND STADIUM PLAZA.
3. REFER TO STADIUM PLAZA AND STADIUM PLAZA FOR INFORMATION ON STADIUM PLAZA AND STADIUM PLAZA.

***** VALUING ROUTE CYCLEWAY
***** SERVICE TO THE ACCESS
***** FUTURE OPENING LEVEL

THE AREA IS NOT TO BE USED FOR THE
PURPOSES OF THE STADIUM PLAZA AND STADIUM PLAZA



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NOTES

7. CAR SPACE AND JOLIE BASED ON
DUNSMITH CITY COUNCIL STANDARDS.

8. READ IN CONNECTION WITH A8 C90
SERIES LANDSCAPE DRAWWALLS FOR
INFORMATIVE MATERIAL. PLEASE SEE

9. REFER TO TOPIC PLAN FROM
WATSON PITT SURVEYORS FOR
EXISTING SITE LEVELS INFORMATION

10. EXTENT OF STADIUM WORKS.

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DIRECT MANAGER
ON
IF COMPAINT

Number: 207175

**FORSYTH BARR
STADIUM**
AT YOUNGSHIRE PARK
AWATEA ST. DUNEDIN

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PMANR	JCB	47 -
CHECKED	JN POP	48 - 30 JUL 2003
APPROVED	JN POP	49 -



ALN
MORRIS

ARCHITECTURAL

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PLEASE PRINT NAME AND ADDRESS OF THE PERSONS ON WHOM YOU ARE MAKING A CLAIM

FOR CONSTRUCTION

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