

REPORT

File: LD503

Report No: 2009/314

Prepared For: Council

Prepared By: Chief Executive

Date: 30 July 2009

Subject: Forsyth Barr Stadium at University Plaza

1. Précis

The development of firm arrangements for the future ownership, venue management and construction management of the Forsyth Barr Stadium at University Plaza sets a potential for tax risk for regional rate contributions. A course of action to secure least tax risk and maximum value for rate funds is recommended, by making payments to the Carisbrook Stadium Charitable Trust.

2. Previous Council Decisions

Following from a sequence of earlier decisions, Council resolved as follows at its 24 June 2009 meeting.

That:

- 1 *The Council confirms that it will pay to the Dunedin City Council a contribution of \$37.5 million towards the costs of construction of the Awatea Street Stadium, subject only to the following conditions:*
 - (a) *The final design is at least to the standards detailed in the brief to the design team as described in the Progress Report dated 17 March 2008 from the Carisbrook Stadium Trust.*
 - (b) *The stadium has a roof.*
 - (c) *Any external funding available for the purposes of reducing ratepayer contributions will be discussed with and sharing agreed between the Otago Regional Council and Dunedin City Council.*
 - (d) *Payments will not be made before:*
 - (i) *The site is cleared for construction; and*
 - (ii) *The site establishment works for construction have been completed; and*
 - (iii) *Permanent on-site construction works have commenced.*
 - (e) *Payments will be made in the intended construction period 2009-2011 inclusive.*
- 2 *All other conditions contained in previous resolutions of this Council relating to funding of the proposed Awatea Street Stadium have been satisfied.*
- 3 *This resolution replaces all previous resolutions.*

3. Efficient Use of Funds

The efficient use of Regional Council funds has technically been assured by utilising the Dunedin City Council's process for disbursement of the funds toward part

payment of an asset they will ultimately own and maintain. The City assurances come through:

- (1) their formalised relationships with the Carisbrook Stadium Charitable Trust and in "Dunedin Venues Management Ltd" a company they have just formed;
- (2) their internal management and controls to give legal compliance for final use of the funds, probity for audit, and effective deployment of funds; and
- (3) DCC will ultimately receive all capital funding contributions and make the construction payments.

The one remaining matter for the Otago Regional Council is to ensure best overall trustee responsibility for ratepayers, including any tax considerations of the funding commitment. A tax efficiency that can be achieved is the elimination of the gift duty liability. An exemption from gift duty exists for funding that is provided in aid of a charitable trust. This can be done if the Regional Council contribution to the stadium is made to the Carisbrook Stadium Charitable Trust in aid of its charitable objectives. This vehicle is used for funding contributions to stadium construction and has the role of securing non-Dunedin City Council funding for stadium construction.

4. Discussion

The request for regional funding of the Forsyth Barr Stadium was made by the Carisbrook Stadium Charitable Trust in March 2007, as fundraising for the project.

The tax benefit commences with the first funding contribution that was scheduled for payment on 1 August 2009. Tax Consultants recommend that all Regional Council contributions should be made to the Trust, subject to suitable agreement as to the purpose of each funding contribution. The purpose of each staged payment relates to construction progress.

Discussion has been held with Dunedin City Executive staff, the Trust Executive and this Council's advisers. Arising from those discussions, it is agreed that regional rate contributions to stadium construction be paid to the Carisbrook Stadium Charitable Trust.

However, to implement this process Council would need to make a change to its resolution of 24 June 2009 to provide that payments be made to the Carisbrook Stadium Charitable Trust as fundraiser for the stadium.

5. Recommendation

That Council:

- (a) Agree that ORC scheduled contributions to the capital cost of Forsyth Barr Stadium at University Plaza be made to the Carisbrook Stadium Charitable Trust;
- (b) Require binding agreements with the Carisbrook Stadium Charitable Trust as to the application and disbursement of each scheduled Regional Council

contribution to the capital funding of Forsyth Barr Stadium before any such payments are made to the Trust.

- (c) That the Dunedin City Council confirms in writing that this funding arrangement meets the terms and conditions relating to the \$37.5 million funding contribution from the ORC for the construction of the Forsyth Barr Stadium at University Plaza.
- (d) Note that the first payment was scheduled to be made to the Dunedin City Council on 1 August 2009 but that payment has not been made whilst trustee responsibility for regional ratepayer funds is explored and optimised.

Graeme Martin
Chief Executive