

Memorandum of Understanding

Date 26 February 2014

Parties

1. Betterways Advisory Limited ("Betterways")
2. Dunedin City Council ("Council")

Background

- A. The Parties wish to record how they will work together to determine if a Hotel can be designed and approved to be located at 41 Wharf Street, Dunedin ("the site").
- B. This Memorandum of Understanding ("MOU") sets out in principle how the parties will work together.
- C. Both Parties agree to work cooperatively and with good faith to each other.

Agreement

1. Council enters this MOU in its corporate capacity and its agreement in no way prejudices any decisions it may need to make as regulator under the Resource Management Act 1991, or in any of its other Territorial Authority Capacities.
2. The Parties' previous agreement dated 26 July 2013 that established an obligation of confidence is specifically agreed to continue to cover the Parties' obligations under this MOU as modified by clauses 18 and 19 herein.

Traffic

3. The Parties agree that managing traffic access / egress to a 5 star hotel ("the Hotel") at the site is a critical technical issue to resolve for the City and the Hotel. The Parties agree to each engage a traffic engineer and instruct them to work together to recommend a traffic solution(s) to ensure traffic is safely and efficiently managed at the interface between the road network and the site. The Council will facilitate the work of the traffic engineers to assist them to conclude their recommendations. Such solutions to be achieved by the [REDACTED]

(Withheld pursuant to section 7(2)(b) of LGOIMA)



4. The Parties will then work together to determine if an acceptable traffic solution can be agreed. If the solutions are not acceptable to either party then at the written option of either party this MOU may be terminated.

Design Panel and Plan Change

5. The Council will by 24 February 2014 agree or decline to sign this MOU and if agreed will seek approval for:
 - a. The establishment of an Urban Design Panel
 - b. Once clause 7 and 11 herein has been satisfied lodge a plan change application to rezone the land at 41 Wharf Street, Dunedin.
6. If approval has not been obtained or this MOU has not been signed by 24 February 2014, then at the option of Betterways and after discussion with the Council, this MOU may be brought to an end.

Other Design Issues

7. If a traffic solution can be agreed then both Parties will assist the other where appropriate, to attempt to resolve to the satisfaction of the Urban Design Panel the remaining key issues which are required to advance a plan change that allows for the approved Hotel. It is recognised that the Hotel is primarily the responsibility of Betterways and the pedestrian connectivity is primarily the responsibility of the Council.

Urban Design Panel

8. The Council agrees to establish an Urban Design Panel that will:
 - a. Comprise a mix of independent experts and local representatives (up to four in total) to assess the Hotel design and make recommendations to the Parties on any design improvements and any other changes necessary to address the key issues which are required to advance a plan change that allows for the approved Hotel and to achieve a plan change. The people to be appointed will be agreed by both Parties.



- b. Receive information under clause 7 or any other relevant information so that it can consider and agree a design for a suitable hotel for Dunedin on the Betterways site. Such information to be provided to it by Betterways and the Council.
- c. Council will fund the costs of the Urban Design Panel.
- d. Both parties will meet within [REDACTED] days after the 24 February Council meeting, or the satisfaction of the connectivity issue by the City's traffic engineers and Betterways Traffic Consultant (whichever is the latter) to resolve if the solution is acceptable and to finalise the brief for the Urban Design Panel and its members.
- e. For the avoidance of doubt it is the responsibility of Betterways to engage and fund any necessary experts it may choose to present to the Urban Design Panel. Council will fund the costs of any experts the Council may engage.
9. The Urban Design Panel is to be briefed to report to the Parties on the Panel's opinion on the agreed design.
10. The Parties will work together to resolve any outstanding matters required to achieve approval of the Hotel by the Urban Design Panel.
11. a. Following receipt of the Urban Design report recommending an approved Hotel design, and a report from the traffic engineers with an acceptable traffic solution, Council staff will develop a report that will present the findings of the Urban Design Panel and joint traffic Engineers report to council.

Provided Betterways confirm the Hotel is financially viable, if the staff report and the Urban Design panel advice both indicate that issues have been resolved or mitigated to the extent that they consider a Plan Change has a good chance of success, Council will meet to consider whether it agrees to promote a Council initiated Plan Change, at its own cost (but with suitable security over the property in place from when the plan change is approved until the hotel is built); and

- b. Should Council resolve not to proceed with a Plan Change contrary to the Urban Design Panel and staff reports indicating the Plan Change has a good chance of success, then 21b will apply but not otherwise; and

Handwritten initials and a circular stamp. The stamp contains the text "CITY OF DUNEDIN" and "2011".

- c. Council will pursue the plan change (or variation) expeditiously, and will use its best endeavours to have the plan change approved within [REDACTED] of the date of the signing of the MOU.
- 12. Council will provide its own staff without cost, meet any external consultant costs of processing the plan change incurred by Council and any processing costs levied by any regulator such as Council, the Court or the EPA.
- 13. Betterways agree to make available to Council any experts to assist the Council to produce evidence in support of the plan change or variation. Where the Council requires a Betterways expert to give evidence on behalf of the Council the Council will pay that Experts fees.
- 14. Betterways will actively support the plan change through its process to gaining adoption.
- 15. Betterways will meet its own costs if it chooses to support the plan change (which would be expected.)
- 16. If the Plan Change is approved by the [REDACTED] of the MOU then Betterways will substantially complete the Hotel in accordance with the design approved by the Urban Design Panel or any modification to the design agreed to by both parties and approved by the Plan Change [REDACTED]. [REDACTED] will grant the Council a covenant over its land to protect the enforcement of Betterways obligations under this agreement. [REDACTED]

Pedestrian Bridge

- 17. The Parties recognise that the Council has previously intended to establish a pedestrian bridge to provide a better link between the City and the Harbourside area and that the bridge is fundamental to the plan change. The primary liability for the cost of the bridge lies with the Council. If it links with the Hotel then the Parties will agree a fair sharing of the costs of the bridge.




Media


18. Following the Council's approval to this MOU the Parties agree to a Joint press release explaining the Parties' agreement to the MOU, the nature of the MOU, and thereafter progress reports on the work programme from time to time. The Parties agree not to release any new information beyond that referred to above without approval of the other party. This clause will survive the MOU.

Official Information

19. The Council agree to keep confidential to the Parties information produced while working together in accordance with this MOU, to the extent it can under the law, in particular under the Local Government Official Information and Meetings Act 1987.

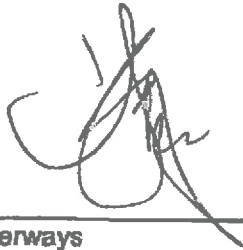
Process for Council Decisions

20. To give effect to this MOU the Mayor and the Chief Executive intend to:
 - a. Seek the Council's approval to this MOU and work programme by 24 February 2014.
 - b. Use reasonable endeavours to make relevant staff and any consultants available to work with Betterways in accordance with clause 3.
21. a. If at any time after commencing the plan change (or variation) either party decides it no longer wishes to proceed with the plan change (or variation) then it will advise the other party promptly. If this occurs the party deciding not to proceed will reimburse the other party's external costs incurred from the date of this MOU until that notice is given, unless agreed otherwise.



- b. If the Council elects not to proceed under clause (11b) (the Termination date) then the Council will reimburse Betterways external costs from the date of this MOU to that decision.

Signed by



Betterways

Executed on the 26th day of February 2014

THE COMMON SEAL of THE DUNEDIN
CITY COUNCIL was hereto affixed
In the presence of:



Mayor



Councillor